TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 16

JOHN F. REAVIS, APPELLANT,

vs.

JOSE FIANZA ET AL.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

FILED SEPTEMBER 28, 1907.

(20,862.)



(20,862.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 183.

JOHN F. REAVIS, APPELLANT,

vs.

JOSE FIANZA ET AL.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 31, 1908.

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1 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the Province of Benguet. In Chancery.

JOSÉ FIANZA ET ALS.
vs.
J. F. REAVIS.

To the Honorable Charles H. Burrit, Judge of the Court of First Instance for Benguet Province:

Your orators, José Fianza for himself and his co-owners and co-complainants, Bisguey, Eslau, Amey and her husband Camantales Maria and her husband Lumagtao, Alsimey and her husband Maggelino, Dahaya and her husband Joaquin, all Igorrotes of the township of Itogon, in the Province of Benguet, humbly complaining, respectfully show unto your Honor the following facts:

1st. For many years, the number of which is unknown to your orators, they, their fathers and his father and his grandfather, have possessed and worked two gold mines lying and being in the barrio of Antamok in the township of Itogon, Province of Benguet, no certain description of which mines can not be given but the boundaries of which were marked by posts set into the ground, and which boundaries are well known to all of your orators "neighbors, said mines being included in a parallelogram 600 feet by 1500 feet and being well developed opened mines, called Antamok" and "Ampassit."

2nd. The title according to Igorrote custom to said mines has come down to your orators in an unbroken chain for many generations. As far as the famil*i* annals go, the first owner was Alamat, who dying, left them to his son Lumagto; who at his death left them to his son Toctó, who at his death left them to his three
2 children Amey and Bisguey (who gave her interests to her son Eslau) and Dominguez, who departed this life about twelve years ago leaving his interests to his children, José Fianza, María Alsimey, and Dahaya. During all these years the said mines have been faithfully and regularly worked and have yielded a good income to your orators who had hoped to live their remaining years in peace and comfort on the profit from th*is* mines, and have a heritage for their children.

3rd. Three of your orators, to wit, Bisguey, Amey and Camantilles live, and for many years have lived, on land next to and adjoining the said mines.

4th. Your orators have themselves worked, or caused to be worked for them, said mines for more than thirty years and have never been interrupted in the full possession of said mines except during the time of rebellion and insurrection or by force mejeure.

5th. On or about December 1900 your orators then being in the

quiet and peaceable possession of their said property, one J. F. Reavis, wickedly designing to deprive your orators of their heritage and to reap, where he had not sown, the fruits of the labors of your orators and their ancestors, did wrongfully, fraudulently, forcibly and illegally enter upon your orators' said property and with force, threats, intimidation and by the exercise of other illegal and unlawful means, and against the protest and entreaties of your orators deprive them of their said mines, which said mines had theretofore for more than thirty years been in the quiet and peaceable possession of your orators and their ancestors. And the said Reavis with the intention of permanently depriving your orators of their rights, title, interests, and usufruct in and to said mines did forcibly take possession of said mines and pretended to claim them and still continues to maintain his unjust, illegal, and inequitable claim to your orators' said property and forbids your orators to work their said mines in which they have labored since childhood, taking out gold, which they have sold generally, and in which said mines they have spent many thousands of dollars.

6th Your orators appealed to the*n* Governor of Benguet, H P Whitmarsh, for help in protecting their property from the despoiler but was told there was no law in regard to mines and that they must wait. Other appeals of your orators to the then Governor availed them nothing.

3 7th. Yours orators had a notice posted near the said mines in December 1901, stating that the ranch on which it was fixed, and the said mines of Antamok and Ampassit, belonged to yours orators, but this notice was ruthlessly torn down by the said Reavis and broken into many pieces by him.

8th. In the spring of 1902 your orators appealed to Governor William F. Pack, of Benguet, against the said Reavis and he heard their complaint in the presence of the said Withmarsh and Reavis and directed the said Reavis not to molest or disturb your orators in the peaceable possession of their said mines and directed them to return and work their said mines.

9th. Notwithstanding this, on or about the first day of October 1902 the said Reavis again entered upon your orators' mines and set stakes thereon, and, your orators are informed, filed a notice of location on their mines with the Mining Recorder of Benguet. Your orators had six months after the promulgation in the Philippine Islands on August 14, 1902, of the Act of Congress of July 1st 1902 in which to stake their said mines in accordance with said Act of Congress, if it was necessary to stake them, but the said Reavis was waiting in Manila till the said law should be promulgated in these Islands, and immediately after the promulgation hastened back to Benguet and staked your orators' mines before *your orators' mines before* knowledge of the promulgation could reach Baguio and before your orators could be advised by their friends, the officials of the government, that such a formality might be necessary in their case.

10th. It may be that others will attempt to enter upon your orators' property and deprive them of the same in which case it will be necessary to make them parties defendant hereto.

11th. Your orators, being Igorrotes, were not permitted by the Spanish law, or the Spanish Authorities under the law, to take out mining claims on mineral lands, and they therefore have no recorded title to said mines which have been in the possession of your orators and their ancestors for more than one hundred years.

12th. Your orators are advised, believe and aver that the statute of limitations as to the holding or occupancy of mineral lands under the said Act of Congress of July 1st, 1902, gives them a title
4 to their said mines, and prohibits the staking and locating of their said mines which they have held for more than one hundred years.

13th. Your orators' mines are not "Public lands," subject to exploration and location under the said Act of Congress. They are now and time out of mind have been the private property of your orators and their ancestors.

14th. Your orators are advised and believe that their title is perfected and made good by the present laws of these Islands which recognize the rights of the Igorrotes to hold property of any kind.

15th. Your orators in the name of one of them, José Fianza, in accordance with law, filed on the 31st day of January 1901, in the Tribunal or Municipal office of Itogon, Province of Benguet, the required declarations as to ownership of said mines, a copy of which said declaration and the subsequent ones is herewith filed, marked Exhibit "A" and prayed to be read as a part hereof.

16th. The tax on said property was duly levied by the Municipal government of Itogon and was paid by the said José Fianza, for all of your orators, copies of the receipts for which payments for the years 1901, 1902 and 1903 are herewith filed, marked Exhibits "B" "C" and "D" and prayed to be read as a part hereof.

17th. Your orators aver, charge and believe that the said Reavis did not prospect for said mines, that he entered upon the same knowing that they were occupied; that he knew that they were not mining claims under the law, but fully developed mines out of which hundreds of tons of earth, rock and ore had been taken, and in which great tunnels had been made by your orators; that he knew that the said mines were the private property of your orators, owned and controlled exclusively by them; that he wilfully, fraudulently, and forcibly, with an evil heart, took possession of your orators' private property because he believed your orators to be ignorant Igorrotes to whom the protection of the law would be denied, or that they would be afraid to assert their rights against him.

18th. The said mines are very rich in gold and yield annually a large quantity of gold which is wickedly and greedily coveted by the said Reavis.

19th. The said Reavis have not only staked your orators' mines and filed his claim thereon, but he has wrongfully entered
5 upon the same and illegally taken gold from your orators' mines, and it is believed and charged that he has taken large quantities of gold, to wit, to the value of four thousand dollars Philippines Currency, which rightfully belongs to your orators, and unless restrained therefrom by this Honorable Court will continue

to extract gold from your orators' mines and inflict upon *hour* orators great and irreparable damages for which there is no adequate legal remedy.

20th. Your orators have been damaged by reason of the gold taken from their mines, and the obstruction of the free working of their said mines by the said Reavis in the sum of six thousand dollars Philippines Currency for which they pray judgment.

21st. Inasmuch therefore as your orators are remediless save in a Court of Equity, where such matters are alone and properly cognizable, they pray that the said J. F. Reavis, and any others who may set up claims adverse to your orators' now or hereafter, may be made parties defendant hereto and required to answer the same, but answer under oath is waived; that an order may issue from this Honorable Court enjoining, restraining, and inhibiting the said J. F. Reavis, his agents or employees, and all others claiming or setting up interest adverse to your orators, from taking gold from your orators' mines, or from entering thereon for any other purpose, and from molesting, disturbing, or obstructing your orators in the free and full enjoyment of their said property. May the said Reavis be made to render a full and complete account of all the gold he has taken from your orators' mines and to return it or pay therefor and to surrender their said mines to your orators. And may the injunction prayed for herein be made perpetual. May Judgment be granted your orators for their just damages and costs in this behalf expended. May all such other further and general relief be granted your orators as to equity shall seem meet and proper and the nature of their case may require. May process issue etc. And they will ever pray etc.

(Signed) JOSÉ FIANZA.

UNITED STATES OF AMERICA,
Philippine Islands, Benguet Province:

6 Personally appeared before me, the undersigned authority, in my office in Baguio this 15th day of January, 1904, José Fianza, who signed the foregoing instrument and made oath that the statements therein contained so far as based upon his own knowledge are true and so far as based upon the knowledge or information of others he believes them to be true.

Given under my hand the day and date above written.

(Signed) J. O. WAGNER,
Notary Public.

Commission expires Dec. 31, 1907.

7 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance in the Province of Benguet. In Chancery

JOSE FIANZA ET ALS.
vs.
J. F. REAVIS.

Know all men by these presents that we Jose Fianza & Mateo Carino are held and firmly bound unto J. F. Reavis in the sum of fifteen hundred dollars U. S. Currency to the payment whereof well and truly to be made to the said J. F. Reavis, we bind ourselves and each of us our and each of our heirs, executors and administrators jointly and severally, firmly by these presents.

Dated at Baguio the 18 day of Jan'y 1904.

Whereas a certain injunction has been issued in the above styled suit restraining J. F. Reavis the defendant from doing certain acts therein mentioned, now therefore the condition of the said bond is such that if the plaintiffs shall finally prevail in the said suit then this obligation to be void, otherwise to remain in full force and virtue to answer all costs and damages that may be awarded against the said plaintiff in favor of the said defendant by reason of the granting of the said injunction.

JOSE FIANZA.
his
MATEO x CARINO.
mark.

Witness:
WM. M. BROWER.
LUCIO ALMAZAN.

Approved Nov. 18 1904.
CHARLES H. BURRITT.
Judge 1st Instance.

NOTE.—Received in this office January 18, 1904; which I certify.
WM. M. BROWER, *Clerk,*
By LUCIO ALMAZAN, *Deputy.*

8 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the Province of Benguet. In Chancery.

JOSE FIANZA ET ALS.
vs.
J. F. REAVIS.

To J. F. Reavis, Greeting:

The plaintiffs having filed their bill in this court in the above styled cause against you, and having prayed for a preliminary in-

junction against you restraining you from doing certain acts therein mentioned and more particularly detailed in said bill, which is duly sworn to, and considering that the allegations therein set out are sufficient to justify the issuance of a preliminary injunction and bond having been executed as required by law.

You are by these presents ordered by the undersigned judge of the court of first instance to restore the possession of said mines to the plaintiffs herein, and you, your agents and employees, and all others having or claiming interests adverse to plaintiffs are enjoined and restrained from entering upon said mines in said bill mentioned for the purpose of taking gold therefrom, or for any other purpose, and are further restrained and enjoined and inhibited from molesting disturbing, or obstructing the said plaintiffs in any way whatsoever in the quiet and peaceful possession of the said mines, pending the further orders of this court.

CHARLES H. BURRITT,
Judge Court of First Instance, Province of Benguet.

BAGUIO, P. I., *January 18th* '04.

I hereby acknowledge service of the preceding order of injunction.
JOHN F. REAVIS.

NOTE.—Received in this office January 18th 1904; which I certify.
WM. M. BROWER, *Clerk,*
By L. ALMAZAN, *Deputy.*

9 On the 14th day of March, 1904, and within the time required by the Court, the defendant filed his answer to the plaintiff's complaint, in words and figures as follows:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the Province of Benguet.

JOSÉ FIANZA ET AL., Plaintiffs,
vs.
JOHN F. REAVIS, Defendant.

I.

Now comes the defendant, John F. Reavis, and files this, his answer to the complaint of the plaintiffs herein, and charges and avers:

1. The defendant is a citizen of the United States of America, residing in the Province of Benguet, in the Island of Luzón, in the Philippine Archipelago.

2. The defendant denies that plaintiffs, or either of them, are the owners of the mines described in said complaint, and
10 denies that plaintiffs, or either of them, are entitled to the possession of said mines, or any part thereof.

3. Defendant denies that the plaintiffs, or either of them, caused to be worked for them said mines for more than thirty years, or any part of said years, and denies that the plaintiffs, or either of them, have been in possession of said mines.

4. Defendant denies that he wrongfully, fraudulently forcibly, and illegally entered upon any property of the plaintiffs, and through force, threats, intimidation, or the exercise of other illegal and unlawful means, deprived said plaintiffs, or either of them of said mines, or any party thereof.

5. Defendant denies that he was wrongfully and illegally taken gold from the mines of the plaintiffs, or either of them, to the value of $4000 Philippine Currency, or of any value.

6. Defendant denies that the plaintiffs, or either of them, have been damaged by reason of any gold being taken by this defendant from any mine, or mines, belonging to said plaintiffs, or either of them, or that said defendant has damaged said plaintiffs in the sum of $6000 Philippine Currency, or any sum, as alleged in Paragraph 20 of said complaint.

7. Defendant denies each, all and every allegation contained in said complaint except such as are hereinabove or hereinafter specifically admitted.

II.

The Defendant for further answer to the complaint of plaintiffs herein, and for his affirmative defense charges and avers:

1. That the lands referred to by plaintiffs herein were on December 10, 1898, unappropriated mineral lands and a part of the public domain of the Kingdom of Spain.

2. That said lands, by virtue of the treaty of peace entered into by and between the United States of America and the Kingdom of Spain on the 10th day of December, 1898, and duly ratified by both governments on the 11th day of April, 1899, became a part of the public domain of the United States of America.

3. That in March, 1901, the defendant entered upon certain unappropriated and unoccupied mineral lands in the Province of Benguet, in the Islands of Luzon, of the Philippine Islands,
11 and located thereon certain mining claims according to the laws of the United States of America.

4. That said defendant entered upon said mineral lands and located said claims openly and publicly and gave notice of such entry and location.

5. That from the month of March, 1901, until October 1st, 1902, said defendant was in possession of said mining claims in good faith and performed work annually upon each of said claims as required by the laws of Congress of the United States of America.

6. That the plaintiffs, and each of them had actual knowledge of said entry and location of said mining claims.

7. That on the 1st day of October, 1902, said defendant relocated one of said mining claims as required by the Act of Congress of the United States of America entitled "An act temporarily to provide for the administration of the affairs of civil government in

the Philippine Islands, and for other purposes." That the mining claim so located on said 1st day of October was duly recorded at 9:45 o'clock A. M. on the 10th day of October, 1902, at the office of the Provincial Secretary of the Province of Benguet, which claim is specifically described in said location notice, a copy of which is hereto attached, marked Exhibit "A," and made a part of this answer.

8. That on said 1st day of October, 1902, the defendant located another of said mining claims according to the Act of Congress above mentioned which claim was duly filed and recorded with the Provincial Secretary of the Province of Benguet at 10:00 o'clock A. M. October 10, 1902. Said mining claim is specifically described in said location notice, a copy of which is hereto attached, marked Exhibit "B" and made a part of this answer.

9. That on said 1st day of Octob*re*, 1902, the defendant located the other of said mining claims according to the Act of Congress above mentioned, which claim was duly filed and recorded with the provincial Secretary of the Province of Benguet at 10:20 A. M., Octob*re* 10, 1902. Said mining claim is specifically described in said location notice, a copy of which is hereto attached, marked Exhibit "C" and made a part of this answer.

10. That ever since the said first day of October, 1902,
12 the said defendant has complied strictly with all the requirements of said Act of Congress and has performed annually all the work required by said Act.

11. That said mining claims were never abandoned by this defendant and said defendant continued in possession of each of said mining claims in good faith until the service of the injunction issued by the Honorable Judge of the Court of First Instance of the Province of Benguet in the above entitled action.

12. That plaintiffs, and each of them, had actual notice of each of said claims.

Wherefore, defendant prays:

(*a*) That the injunction heretofore issued in this cause be permanently dissolved.

(*b*) That plaintiffs take nothing by this action.

(*c*) That defendant may go hence without day, and that he have and recover his costs and disbursements herein, and for such further and other relief to which defendant may be entitled.

Manila, P. I., March 8, 1904.

(Signed) COUDERT BROTHERS,
JOHN W. HAUSSERMANN,
CHARLES C. COHN,
Att'ys for Defendant.

Office 86 Rosario, Manila.

MAP (1)

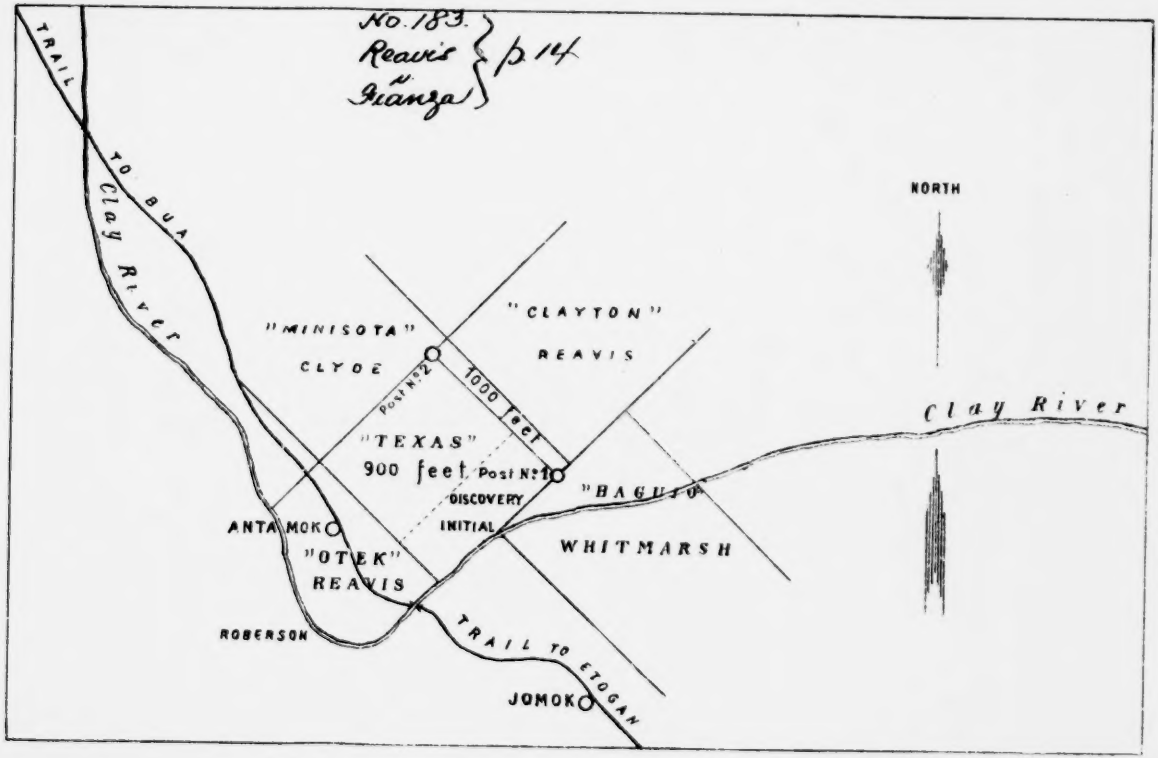

No. 183.
Reavis
"
Granza
p 14
TRAIL
TO BUA
Clay River
NORTH
"MINISOTA"
CLYDE
"CLAYTON"
REAVIS
Post N:2
1000 feet
"TEXAS"
900 feet
Post N:1
DISCOVERY
INITIAL
Clay River
"BAGUIO"
WHITMARSH
ANTAMOK
"OTEK"
REAVIS
ROBERSON
TRAIL TO ETOGAN
JOMOK

EXHIBIT "A."

Location Notice.

OCTOBER 1ST, 1902.

This certified that the undersigned citizen of the United States of America having complied with local customs, regulations &c. and with the laws of the United States (see note with diagram) and with the laws enacted by Congress March 1902 intitled an Act to provide temporarily for conditions in the Philippine Islands—has this day located and claim- 1000 linear feet along a quartz lode bearing gold and 1000 feet in width:—situated in "Antamok" Province of Benguet Islands of Luzón, P. I. the name of claim to be "Texas" and fully described as follows—Laying north of the Clay River and near the Citio of "Antamok" and laying on a quartz land running in a north west and south-east direction joining the river at the south west corner about 500 feet more or less below the crossing of the trail leading to "Gomok" from "Antamok."

13 Located Oct. 1st, 1902.

Locator. JOHN F. REAVIS.

Recorded Oct. 10, 1902, at 9.45 A. M.
(Sig.) P. E. WAGON,
Prov. Sec'y.

Diagram of Claim Known as "Texas."

Map (1).

(Here follows map marked p. 14.)

Initial Post. No. 1 "Texas" quarter claim bearing gold. Located Oct. 1, 1902. Locator John F. Reavis. Direction of Post No. 2. Northwest 1000 linear feet. Number of feet laying northeast of line from post number two to post number one 100, number of feet lying southwest of line 900. See discovery 100 feet northwest of this Post. (Post No. 1.)

Located Oct. 1, 1902.

Locator, JOHN F. REAVIS.

Attest

H. CLAY CLYDE.
H. P. WHITMARSH.

(In margin:)
74. Located by John F. Reavis.
" Oct. 1, 1902.
Recorded Oct. 10, 1902, at 9:45 A. M.

EXHIBIT "B."

Location Notice.

OCTOBER 1, 1902.

Notice is hereby given that the undersigned citizen of the United States of America having complied with "Local Custom regulations, etc., and with the laws of the United States (see note with diagram) and with the laws enacted by Congress March 1902, "entitled An act to Provide Temporarily for conditions in the Philippine Islands" have this day located and claim 1000 linear feet along a
16 quartz lode bearing gold and 1000 feet in wi-th situated in "Antamok" Province of Benguet, Island of Luzon, P. I. The name of claim to be "Otek" and fully described as follows:

Laying north of Clay River and laying at sitio of "Antamok" and along a quartz lode bearing gold and other metals the lode running in a northwest and southwest direction joining the river on the south and west and joining the Texas northeast and the trail going from Bua to Gomok and Etogan passes over the claim north and south.

Located October 1, 1902.

Locator, JOHN F. REAVIS.

Attest

H. CLAY CLYDE.
W. P. WHITMARSH.

Recorded Oct. 10, 1902, at 10:00 A. M.

P. E. WAGAR,
Prov. Sec'y.

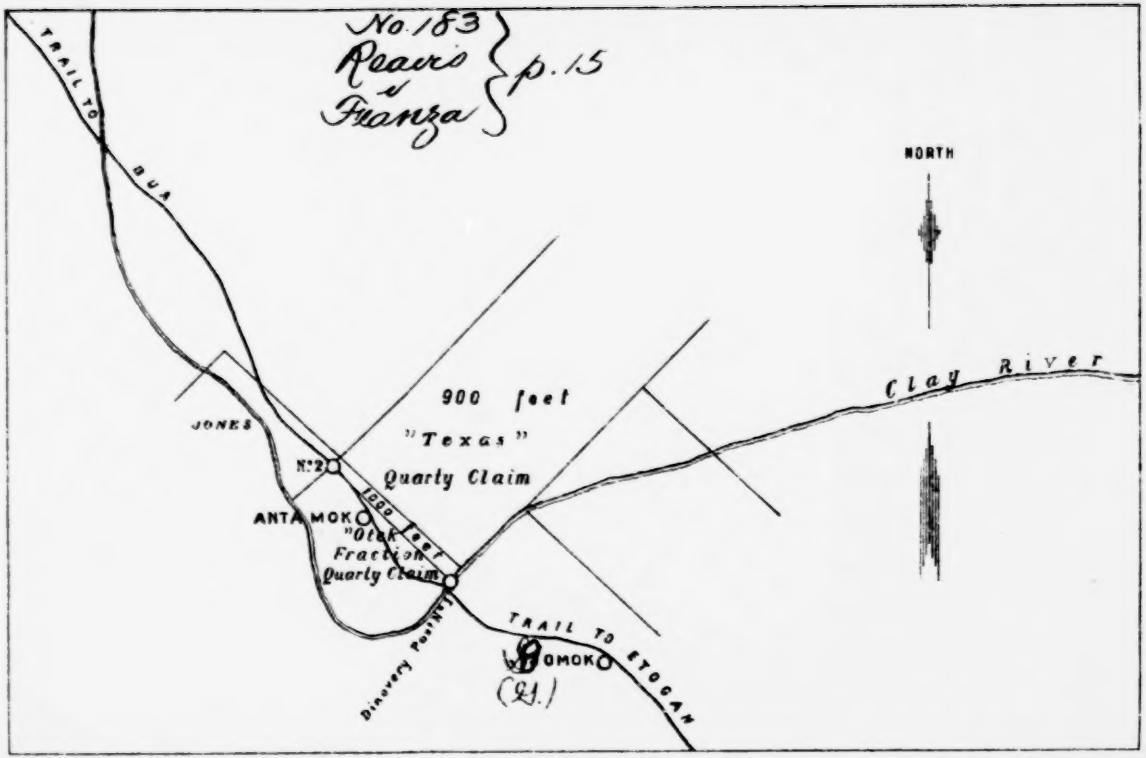
NOTE.—This claim has been held and worked under the United States laws since located, Feb. 1901, by me and I have lived on this claim since that date.

Locator, JOHN F. REAVIS.

Map (2).

(Here follows map marked p. 15.)

MAP (2)


No. 183
Reaves
Franza
p. 15
TRAIL TO
BUA
NORTH
Clay River
900 feet
"Texas"
Quarly Claim
JONES
N°2
1800 feet
ANTAMOK
"Otek"
Fraction
Quarly Claim
TRAIL TO ETOGAN
Discovery Post
(21)

Initial post No. 1, "Otek" quartz claim, number one. Locator John F. Reavis.

Post No. 2 is 1000 feet linear along this quartz lead—100 feet lays northeast of a line from Post No. 1 to Post No. 2 and 900 feet lays southwest of the line—Provided—that the southwest line shall comply with the meanderings of the river bank south and west including bed of river and there be a full claim otherwise this shall be a fraction of a claim known as the "Otek." Discovery north of No. 1 Pos- across the river about 100 feet. (In Margin at bottom) "Otek" located by John F. Reavis. Located Oct. 1, 1902, Recorded Oct. 10, 1902, at 10:00 A. M.

EXHIBIT "C."

Location Notice.

This certifies that the undersigned citizen of the United States of America having complied with "Local Customs Laws and Regulations, and with the laws of the United States. (See note
17 with diagram) and with the laws as enacted by Congress March 1902, *I*ntitled an Act to Provide temporarily for conditions in the Philippine Islands—Has this day located and claim-1000 linear feet along a quartz lode bearing gold and 1000 feet in width. Situated in Antamok, Province of Benguet, Island of Luzon P. I. The name of claim to be "Clayton" and fully described as follows:—Laying north of Clay River and near the Sitio of "Antamok" and laying on a quartz lode running in a northwest and southeast direction, joining the "Texas" on southwest, the "Bagio" southeast and the "Antamok" on the northwest.

Located Oct. 3, 1902.

Locator, JOHN F. REAVIS.

Recorded Oct. 10, 1902, at 10:20 A. M.

(Sig.) P. E. WAGAR,
Prov. Sec'y.

NOTE.—This claim was located sometime in March of 1901 and I have done more than 200 feet of timbering on the claim.

JOHN F. REAVIS.

Map (3).

(Here follows map marked p. 18.)

Initial Post No. 1, "Clayton." Locator, John F. Reavis.
Located Oct. 3, 1902.
Direction of Post No. 2 northwest. Number of feet laying northeast of line 500. Number of feet laying southeast of line 500, line running from this Post 1000 linear feet in northwest direction. See discovery at this Post. Quartz gold.
Located Octo. 3, 1902.

Locator, JOHN F. REAVIS.

Attest
H. CLAY CLYDE,
H. P. WHITMARSH.

(In margin, at bottom:)
76. "Clayton" Located by John F. Reavis.
Oct. 1, 1902. Recorded Oct. 10, 1902, at 10:20 A. W.

The above case came on for trial in May, 1904, and the following stipulation was made and entered into by all the parties:

"In the Court of First Instance, Province of Benguet.

19 JOSE FIANZA ET AL., Plaintiffs,
vs.
JOHN F. REAVIS, Defendant.

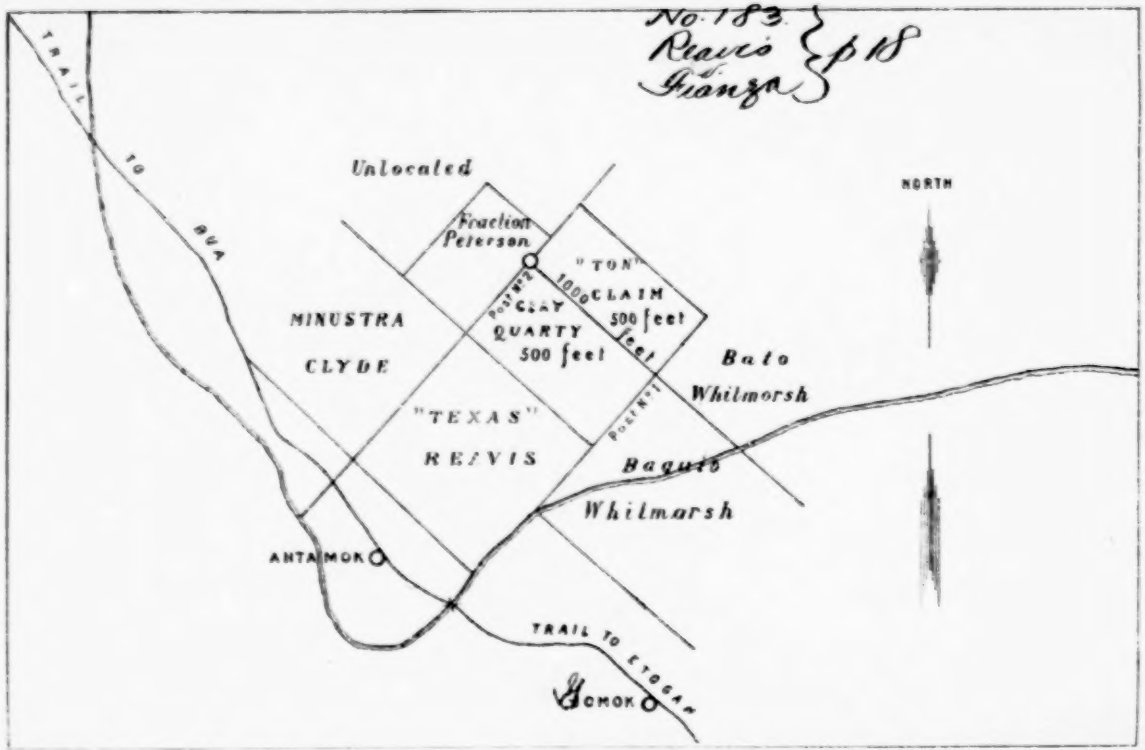
It is hereby stipulated and agreed by the counsel hereto and by and with the consent of the court that the pleadings and proceedings in the above entitled case may be filed and conducted in the English Language as provided in section One of Act No. 1123 of the Civil Commission.

(Signed) PILLSBURY & SUTRO,
W. H. LAWRENCE.
Attorneys for Plaintiffs.
COUDERT BROTHERS,
JOHN W. HAUSSERMANN,
CHAS. C. COHN,
Attorneys for Defendant.

The above stipulation of counsel having been filed in the above entitled action the Court hereby consents to have the proceedings conducted in the English language and it is hereby so ordered.

(Signed) CHARLES H. BURRITT,
Judge of First Instance."

MAP (3)


No. 183.
Revis } p 18
Franza
TRAIL TO BUA
Unlocated
Fraction Peterson
"TON"
1000 CLAIM
500 feet
POST No 2
CLAY QUARTY
500 feet
500 feet
POST No 1
MINUSTRA
CLYDE
"TEXAS"
REVIS
Bato
Whitmarsh
Baguio
Whitmarsh
NORTH
ANTAMOK
TRAIL TO ETOGAN
ITOMOK

20 In the Court of First Instance, Mountain Judicial District, Province of Benguet, Baguio, P. I., May 16th, 1904.

In Chancery. Civil Case No. 5.

JOSÉ FIANZA ET ALS.
vs.
JOHN F. REAVIS.

J. W. Haussermann, representing Conder Brothers, Attorney for Defendant.
W. H. Lawrence, representing Pillsbury and Sutro, Attorney for Plaintiffs.

The plaintiff JOSÉ FIANZA, after being duly sworn upon his questioned testified as follows:

Question by Mr. LAWRENCE:

Q. What is your name?
A. José Fianza.
Q. Where do you live?
A. In Itogon, Province of Benguet.
Q. How old are you?
A. I think about thirty six years of age.
Q. What is your father's name?
A. Dominguez.
Q. What is your occupation?
A. Popular representative of the Igorrotes.
Q. How long have you been Popular Representative?
A. I was elected on the first of January of this year.
Q. You state that your father's name is Dominguez; is he alive?
A. No, he is not alive.
Q. When did he die?
A. I am not sure but I think more than ten years ago.
Q. Do you know what his father's name was?
21 A. I know.
Q. What was it?
A. Toto.
Q. When your father was alive did he own any mines?
A. Yes.
Q. Where were those mines?
A. They were in Antamoc and Ampasit.
Q. After your father died who owned the mines?
A. I succeeded him in the mines.
Q. Who has these mines to day?
A. I.
Q. Has any one ever interfered with your possession of the mines?
A. Yes, Mr. Reavis interfered with my possession.
Q. What did Mr. Reavis do?

A. Mr. Reavis came to dig inside of my place, and also put a post inside of my place.

Question by the COURT: At Antamoc or Ampasit?

A. In Ampasit.

Question by Mr. LAWRENCE:

Q. Tell everything Mr. Reavis did and what you did and all about it?

A. I only protested about Mr. Reavis placing his post inside of my place. I have no objection to the act of Mr. Reavis digging below my property.

Q. On what part did he place this post inside of your property?

A. Ampasit.

Q. Is that the only post that Mr. Reavis placed on your property?

A. Yes that is the only post, just that post, only one post, as in regard to the other post I have nothing to say, as I have nothing to do with them.

Q. What is the extent of your property?

22 A. It is a very large piece of property, but I have my posts there. I cannot fix the exact extent, but I have my posts there.

Q. How far from your line is Mr. Reavis' post?

A. That is the distance within my boundaries that Reavis' post is placed. (The witness shows the distance from the Tribunal Building of Baguio to the Episcopal Church, which can be seen from the Court room.)

Q. And are your properties in Ampasit and Antamoc contiguous?

A. Yes, they are contiguous and between them there is a little rivulet. The post- are put about these two claims as if it were a solid piece of land.

Q. When was this stake of Mr. Reavis placed there?

A. According to my calculation one year and a half up to this month.

Q. Do you know where Mr. Reavis' other posts are?

A. Yes, I know.

Q. Now can you show the Court how Mr. Reavis' claim as it is staked out overlaps yours?

A. (The witness indicates by the cover of a book, a quadrolateral of land one half representing Ampasit and one half representing Antamoc.) Ampasit is in the western part *of* Antamoc the eastern part *Sr.* Reavis is working in the southern part of Ampasit and he placed his post in the center of my property Ampasit, and for that reason I protested.

Q. Show please in what direction from this post Mr. Reavis' line runs?

A. I do not know in what direction of the line Mr. Reavis wishes to take because I cannot read the writing there is on the post.

Q. Do you know where you find another post?

A. The other post of Reavis is on the east of my property of Antamoc.

23 Q. How far from your property?

A. His post and my post are joining.

Q. Where else has Mr. Reavis a post?

A. I do not know where his other posts Are, I have only seen the post that is within my property and the two posts that I have described on the other side of it.

Q. State in what manner your mines have been worked?

A. My mines have been worked by making excavations.

Q. Where are those excavations, in Antamoc and Ampasit or in both?

A. There are many excavations in Antamoc and Ampasit. The excavations are not the same, there are many different classes of excavations, *there* are not all the same, some are one fathom deep and some two fathoms deep. Our custom is if we do not find gold in one fathom or two fathoms we make another place until we do find something.

Q. When were these excavations made?

A. The excavation- made upon this property were made some of them by my grandfather and some of them by my father, and some of them by myself.

Q. Where did your father get this property from if you know?

A. Yes, I know my father received this property from Toto his father.

Q. How long ago can you remember these mines? When did you see these mines *from* the first time?

A. I have seen the mines from the time that I first had knowledge of observation, because my father sometimes carried me to those mines when he went there to work.

Q. Since that time have the mines been continuously worked?

A. Yes.

Q. Who has worked the mines since that time?

A. Dominguez worked those mines.

Q. And after Dominguez' death?

A. I, myself succeeded him.

24 Q. Has anybody since you have owned those mines, has anybody ever claimed them against you?

A. No.

Q. While Dominguez was alive did he claim to be the owner of these mines?

A. Yes.

Q. Is there any one else interested with you in the ownership of these mines?

A. Yes, my aunt and my cousins and other sisters Bisguey.

Q. Who is Bisguey?

A. Sister of Dominguez.

Q. Who else?

A. Amey, also a sister of Dominguez.

Q. Who else?

A. Maria, my sister.

Q. Any body else?

A. Alsimey, my sister.

Q. Any body else?

A. Dahaya my sister.

Q. Any one else?

A. Yes also a son of my sister called Eslau.

Q. Did you ever take any steps to inform Mr. Reavis that you claimed this property?

A. I only informed Mr. Reavis that these mines were my property.

Q. What answer if any did Mr. Reavis make?

A. He said that the Igorrotes had no rights to possess mines as they had no documents of any kind.

Q. Did you put up any notice to show that you claimed the property?

A. Yes, I placed a sign on the same which was destroyed by Reavis.

Q. What did that sign say?

A. On the sign there were writt*ing* these words si*ng* of Fianza del Rancho del Fianza for his mines in Ampasit and Antamoc.

25 (COURT:)

Q. What dialect?

A. In Spanish.

Q. Can you repeat the exact words of that sign as printed on the post?

A. I cannot do it myself because it was written by the Secretary.

Question- by the COUNSEL FOR PLAINTIFF:

Q. What Secretary?

A. The Secretary of Itogon by the name of Miguel Picarte.

Q. Have you the sign here?

A. Yes.

Q. Please produce it to the Court?

A. (The witness produces four small pieces of boards upon which there appears by putting the pieces together the following language: "Rancho —— (At this point the word is partly erased but it seems to be the word "de") De José Fianza por sus minas de oro denominados Antamoc y Ampasit.

Q. Did you ever go to the officers of the Government to protect your claims?

A. Yes, I first went to Governor Whitmarsh.

Q. Did Mr. Reavis appear before the Governor?

A. No, he did not go before Governor Whitmarsh, because Whitmarsh said to me do not present any claims against the Americans because the Americans are your friends, your brothers. And after this I had to wait until Mr. Pack arrived before whom I presented my protest.

Q. Did Mr. Reavis appear then before Mr. Pack as Governor?

A. Yes.

Q. What took place between you, Mr. Pack and Mr. Reavis?

A. Objections entered by the Counsel for the defendant as incom-
petent, irrelevant and immaterial, nothing has been said to
26 the effect that Mr. Reavis was present in that conversation.
The time and circumstances of the conversation should be shown before the question is asked.

Objection over-ruled by the Court.
Exception entered by Mr. Haussermann.

A. It was then when I went before Governor Pack, Governor Pack called Mr. Reavis and once there Mr. Pack said to me that that mine was of my property. And after that Mr. Pack sent Mr. Wagner to go to my place and measure off my mine.

Q. Did Mr. Reavis take any part in this conversation?

A. Yes, Mr. Reavis heard all of this conversation but he did not say anything.

Court here adjourn in recess until two o'clock this afternoon.

Résumé of Afternoon Session.

The declaration of the plaintiff José Fianza is continued.

Questions by Mr. LAWRENCE:

Q. Did Mr. Wagner measure the claim?
A. Yes.
Q. Did he put in stakes?
A. Yes, he placed those pine stakes or posts.
Q. Did you go with Mr. Wagner?
A. Yes.
Q. Did you show him where your claims were?
A. Yes.
Q. And he put the stakes in as you showed us this morning here, and marked the place?
A. Yes.
Q. What time was that land measured by Wagner?
A. I cannot state the exact date, but I think that it was two or three months after the arrival of Governor Pack.

27 Q. How much gold did you take out from that property every year?

A. The amount of gold we took from these mines annually was not the same, sometimes we were able to get the weight of ninety pesos of gold each year. In the last year I got from these mines the weight of ninety pesos, which quantity was sold to Mateo Cariño, who now has it in his possession.

Q. What was the least amount you ever took out in one year?
A. The weight of twenty five pesos.
Q. How many people have you had working the mine?
A. There were no exact number of men, sometimes I had ten and sometimes twenty.
Q. What did you take from them year before last?
A. About the weight of seventy pesos.
Q. And the year before that, 1901?
A. More than forty pesos.

Questions by Mr. HAUSSERMANN—cross-examination:

Q. How large a district is Antamoc?

A. Objected to by Mr. Lawrence.
Objection overruled by the Court.

A. Antamoc is about half the size of what Otto sold in Baguio (Otto refers to Otto Sherer).

Q. Is all the land where the mines are which you claim, where you located, mineral lands?

A. Yes.

Q. Have you any paper title to those mines?

A. No, because we, the Igorrotes, did not have this custom of having titles, only now at this time.

Q. That was mineral lands, was it not, during Spanish times?

A. During Spanish times mineral lands.

28 Q. Did any of your ancestors through whom you claim these mines have any paper title to any of these mines?

A. No, I know they had no documents because we, the Igorrotes, did not have that custom.

Q. Do you know a man by the name of Hans Hollman?

A. Yes, I have known a man by that name.

Q. Do you know of the mines that he located during the Spanish times?

A. I know that during the revolution or insurrection this man Hollman wanted to usurp my mine and I went to present myself to Governor Pack to protest and then he (Governor Pack) wrote to Hollman, who was in Manila, but he, Hollman, answered and said give those mines to Fianza because they are his. No, it was a telegram that was sent to him and which he answered.

Q. Did you see the stakes that Hans Hollman put on the mines down there?

A. Yes, I saw them.

Q. Did the claims that Hollman made to that mine include all and more than the property which you now claim?

A. Hollman when he put his stakes include all my property both Ampasit and Antamoc.

Q. What kind of Mark did Hollman place there?

A. Posts of pine about the size of my leg.

Q. Are these posts there yet?

A. The posts are not there now because when Holman answered the Governor's telegram saying that these were my mines I took them away when Mr. Wagner came there.

Q. What did Mr. Wagner do when he went out there to measure the land?

A. When Mr. Wagner went there to measure the land he made a plan and it was signed by Mr. Clyde, a miner.

Q. What else did Mr. Wagner do besides to measure the land and make a plan of it?

29 A. Señor Wagner when he made the plan he said also that I was the owner of the mines and nothing more.

Q. What became of the plan which Wagner made at that time?

A. I think I have it in my house.

Q. Will you produce it.

A. I could produce it right now here if I had it. It is possible that a copy of this plan is in the Government building because they made two.

Q. Where did Mr. Wagner take that plan, that paper, which he made for you that day?

A. Mr. Wagner brought it back with him.

Q. Back where?

A. He said to me take that copy and I will take the other copy, because I will keep it in the office.

Q. Did he make that plan at the same time that he measured the land?

A. The same day after measuring the land and placing the posts. He made the plans in the Camarines of the mines.

Q. And then after making that plan of the mines at the Camarines of the mines, did he then take it back with him to Baguio.

A. Yes.

Q. Mr. Wagner, did he make any more plans than these two at that time for you?

A. He did not make but two.

Q. Where is that Camarin located on the mines, that you spoke about?

A. My Camarin is located near the house put up by Mr. Reavis and within the mining property.

Q. When did Mr. Reavis put that post there that you claim he placed on your property?

A. Less than two years ago.

Q. Did you see Reavis put that post there?

A. No.

—. Did you protest at any time personally to Mr. Reavis at about that post being there?

A. I protested personally to Mr. Reavis and he said to me "if you take off that post you will go to Bilibid."

Q. Did you remove any post off the property which you claim had been put there by Mr. Reavis.

A. No I did not. I wanted to take off that post but he said to me "if you take off that post you will go to Bilibid."

Q. How long had Reavis been on that land before you made any protest, how many months?

A. More than a week I made my protest, after I learned of the post being there.

Q. Who was Governor at the time you made this protest? A. Pack.

Q. When this conversation occurred about the post when Reavis told you that if you remove the post you would go to Bilibid did that conversation take place after this suit was commenced?

A. It was before the suit was commenced.

Q. How long before the suit was commenced?

A. I do not know what was the length of the time but I think about seven months.

Q. When did you first know Mr. Reavis?

A. Since Whitmarsh'- time but before I presented my claim.

Q. How long after you knew Mr. Reavis did you make the protest to Governor Whitmarsh?

A. About fifteen days.

Q. Who built that camarin on the property in which Mr. Wagner made the plan?

A. I did.

31 Q. When did you built that?

A. That camarin was an old one that was on the claim and I repaired it.

Q. Did you built that camarin there before you know Mr. Reavis?

A. As soon as I took charge of the mines that camarin was already there, and when it commenced to get old I removed it to the nearer place and then I repaired it.

Q. When you repaired that camarine you removed it to where it is at this time did you not?

A. Yes, I removed that camarine to the place where it is now, about as far as from here to the quartel. (Indicating the Constabulary quarters.)

Q. Do you know the house that Mr. Reavis lives in now down at Antamoc?

A. Yes, I know.

Q. Did he live in the house down there at Antamoc before you moved that old camarine to where it is at the present time?

A. When I removed that camarine Mr. Reavis was living in Baguio, but I do not know in what house.

Q. Did he live in his house at Antamoc before you moved that camarine?

A. Yes, Mr. Reavis was living in the house that he built before I moved that camarine.

Q. Where was that sign placed? On what part of this claims? That sign posted by you and torn down by Reavis.

A. This sign was placed on the side of the camarine.

Q. How long after you move that Caramine up there where it is now, was that sign place- there?

A. Since the camarine was moved the sign was placed inside but formerly the sign was on the side of the old camarine.

Q. Where was the old camarin before it was moved?

A. The old camarine was on the western side of Mr. Reavis' house.

32 Q. And who owned that camarine when it was down near to Mr. Reavis' house?

A. My father Dominguez.

Q. Do you know the Igorrote named Picalso.

A. Yes.

Q. Did Picalso live in that Camarine before it was moved?

A. Yes, he was living there he lived there when we were working in the mines.

Q. When was that sign made?

A. More than two years ago.

Q. How much more than two years ago.

A. About one or two months.

Q. Did you put up that sign after you learned that Mr. Reavis claimed that mine?

A. I put up that sign about three months after I made my protest to Governor Pack.

Q. Was not that sign put up there after Wagner measured the land and made that plan?

A. Yes, I put up this sign after Mr. Wagner measured the land but I do not know how long after.

Q. You had no trouble with Mr. Reavis at the time Mr. Reavis went on that land did you? On those mines?

A. No, we had no trouble. I did not see any posts placed there by Mr. Reavis as yet. I only presented my claim when I saw the posts placed there because he wanted to usurp my claims.

Q. Where have you lived since 1900?

A. I was living in Itogon but frequently visited Antamoc.

—. How many hours was this from Antamoc?

A. About one and one half hours.

Q. Who lives in the house in Antamoc, in which Reavis now lives, when Reavis first arrived there?

33 A. Comantiles, the husband of my aunt Amey.

Q. And she is one of the plaintiffs in this case is she not?

A. Yes, because we are the heirs.

Q. Was Francisco Valancia living there in that house then where Reavis now lives?

A. Yes, he was living there.

Q. Francisco owned that house did he not?

A. No, Comantiles.

Q. And that house is on these claims is it not?

A. The place where the house is now situated before was included in the mines but now Vicente Balpiedad did not want that house included in the limit of the mines or claims. It is not therefore now included.

Q. Did Vicente Balpiedad make that survey after this suit was filed?

A. Yes.

Q. Have you that survey now?

A. No, I have not.

Q. Where is that survey?

A. He has not finished it yet, and Mr. Reavis was present when he surveyed that land.

Q. What mines do you claim: that which you claim by this suit, or that which was measured by Vicente Balpiedad?

Objected to by Mr. Lawrence as irrelevant and immaterial.

Objection sustained by the Court.

Redirect examination by Mr. LAWRENCE:

Q. Was the camarine on the mining property before it was moved?

A. Yes.

Q. Was it on the mining property after it was moved?

A. That camarine is not now inside of the mines according to the survey made by Balpiedad.

Q. It is on the land you claim?

A. Yes.

34 Q. What has that camarine been used for?

A. It is used for stopping in when I take my lunch there when I go there to superintend the work.

Q. Has it always been used in connection with the mines?

A. Yes, it has always been used in connection with the mines. It is in this house that the miners stop to sleep.

Q. Do you know how this sign got broken (Showing and handing the witness pieces of the exhibit marked for identification Plaintiff's Ex. "A")

A. Comantiles told me that Mr. Reavis destroyed it because he is the keeper and always stays in Antimoc by my order.

Q. Did Mr. Hollman ever do any work on those mines, on that property?

A. No.

Q. Where did you first see Mr. Reavis working on those mines?

A. I saw Mr. Reavis first working on the tunnel near his present house.

Q. Is that on your line?

A. No, it is not inside of my property.

Q. When did you first know that Mr. Reavis was making any claims to your property?

A. In the time of Governor Whitmarsh.

Q. How did you know it?

A. Yes, because at that time Mr. Reavis came down there and told me that he wanted to take those mines, my property.

Q. How soon after that did you make protest?

A. Yes, I told Mr. Reavis at the time in reply to his wish to take the mines, that I owned these mines and he must not take them.

Q. How long after that did you protest to the Governor?

A. Less than a month and then I went to present my claim or make my protest before Governor Whitmarsh.

35 Recross-examination by Mr. HAUSSERMANN:

Q. In what dialect did you talk to Mr. Reavis?

A. I spoke in Ilocano language by the interpretation of his servant Ingracio.

Q. When was this conversation?

A. In the same place of Antamoc.

Q. At Reavis' house?

A. At Comantiles' house, where Mr. Reavis used to stop.

Q. Is that the same house that he is living in now?

A. Yes.

Q. And he was living there when this conversation took place was he?

A. Yes, where Mr. Reavis is living now and which Comantiles occupied before.

The witness for the plaintiff MARCOS MADARANG, after being duly sworn testifies that he is 44 years of Age, resident of Aringay, Province of La Union.

Questions by Mr. LAWRENCE:

Q. Have you ever lived in Benguett Province?
A. Yes.
Q. Since when?
A. From 1876 or '77 to 1893.
Q. In what position?
A. I was an escribiente in the Spanish times and then I was appointed a Presidente.
Q. When you lived in Benguet did you know an Iggorrote called Dominguez?
A. Yes.
Q. What position did this man have?
36 A. He was an old man who had mines in Itogon, in Antamoc.
Q. Did you ever see these mines?
A. Yes, various times.
Q. As what?
A. The "Comandante" carried me along as Interpreter.
Q. What was the name of the comandante?
A. Juan Arenos, Vicente Villeña, Cesario Martinez and another called Henrique Oraa.
Q. Did Dominguez then claim to be the owner of the mines?
A. Yes, he is the man and chief who said he was the owner. I do not know whether there was any other one who ever owned this place.
Q. Did you ever buy, or did your companions ever b-y, gold from this man?
A. Yes, I remember of having bought gold in small quantities.
Q. Who did he buy the gold from?
A. This old man Dominguez.
Q. When did you visit these mines for the first time?
A. In the epoch when these gentlemen were the comandantes.
Q. In what year was it when you went there for the first time to these mines?
A. In 1879-90-91. In the time when these gentlemen were the comandantes.
Q. And during all these years the Chief of these mines was Dominguez?
A. Yes.
Q. Did the gentlemen who went with you buy gold also?
A. Yes, Villeña and Arenos.
Q. Did they visit the mines?
A. Yes, but when they buy the gold they carried it to the house of the Government. They only engaged the gold there and
37 then the Igorrotes carried it to the Government bulding.
Q. In what place?
A. In the place called Antamoc.

Q. What extent did these mines have?

A. This mountain which had some places of 10 and 15 and 30 brazos.

Q. What was the area of the land of the mines?

A. I could not state what was the extent.

Q. Were there any other mines there at that time?

A. No more, but there were quite a number of holes there.

Q. Before was all of it the property of Dominguez?

A. Yes.

Q. Do you know any other mines in that district besides those of Dominguez?

A. No.

Q. How many houses were there near the mines?

A. There were small houses three or four, but there were houses above and below where the Iggorrotes lived.

Q. And inside of the line or land of the mines there were various sheds?

A. Yes.

Cross-examination by Mr. HAUSSERMANN:

Q. That whole mountain there was called Antamoc was it not?

A. All of it was called Antamoc, and there was another name by which it went Ampasit but they all called it Antamoc.

Q. About how large is that district down there known as Antamoc?

A. I could not state, I do not know.

Q. Is the whole mountain called Antamoc?

A. Yes, by that name.

Q. Are there any excavations on that mountain?

A. Yes.

Q. Made by many Iggorrotes?

38 A. Yes, by many, by the laborers.

Q. Was it not the custom in Spanish times for Iggorrotes to go to that mountain to get gold and sell it to various people?

A. I do not know, they may have gone, but they always said the mines was Dominguez.

Q. It is not a fact that the Iggorrotes sold the gold to Dominguez?

A. I do not know about that. But I think they had a contract he may have given them some of the gold they took from the mines, but I do not know. It was just according to the conditions.

Q. There are excavations all over that mountain are there not?

A. Yes.

Q. As you understand it the whole of that mountain was the property of Dominguez was it?

A. All of Antamoc.

Q. Do you know whether Dominguez had any written title to that mountain or not?

A. I do not know, but I think he did not have.

Q. That whole mountain is now and always has been considered as mineral land has it not?

A. Yes, I know it was mineral land since the time I was there.

Redirect Examination by Mr. LAWRENCE:

Q. During the time that you knew Dominguez was he working the whole mountain?
A. Yes.
Q. In all parts of the mountain?
A. No, only the place called Antamoc.

Recross-examination by Mr. HAUSSERMANN:

Q. Is the whole of that mountain known as Antamoc?
A. Yes.

39 Witness BISGUEY after being duly sworn responds to the questioned asked her as follows:

Questions by Mr. LAWRENCE:

Q. Where do you live?
A. Comoc, barrio of Itogon, Province of Benguet, (says she is 21 years of age and upwards).
Q. Do you know José Fianza?
A. Yes.
Q. What relation are you to José?
A. He is my nephew, because his father was my brother.
Q. What was your father's name?
A. Toto.
Q. Do you remember your father?
A. Yes, I remember him because I saw him.
Q. How big were you when your father died?
A. About this big (witness indicates the height of the chest of the witness).
Q. Did your father own any mines?
A. Yes.
Q. Where were they?
A. In Antamoc.
Q. Did he own mines in any other district?
A. No.
Q. After your father died who owned the mines?
A. Dominguez.
Q. After Dominguez died who owned the mines?
A. When Dominguez died we, with Fianza owned the mines.
Q. Do you know the mines that Fianza owns to-day?
A. Yes, I know, because I, myself, am placed by Fianza to keep the mines and superintend the labor.
Q. Are the mines that you and Fianza own to-day the same ones that Toto owned?

40 A. Yes.
Q. Do you know this American man, Mr. Reavis?
A. I have known him for a short time, because when we were working in the mines Mr. Reavis came.
Q. What did he do when he came?
A. When we were working that mine Mr. Reavis came up and said to us "Get away from this mine and if you do not want to go away from this mine I will throw stones at you."

Q. What language did Mr. Reavis speak to you in?
A. We did not understand the language but he said "vamoose" and we understood that.
Q. How did you know he would throw stones at you if you did not "vamoose"?
A. We know it by the interpretation of the boy by the name of Mocamoc.
Q. Is he Mr. Reavis' boy?
A. No.

Cross-examination by Mr. HAUSSERMANN:

Q. When was that when Mr. Reavis told you to "vamoose"?
A. It was in the time of Governor Pack that Reavis told us to vamoose. And after that Fianza presented his claim to Governor Pack.
Q. Where is Antamoc?
A. On the other side of Baligmay.
Q. Is Ampasit in Antamoc?
A. Ampasit is here and Antamoc is here (Witness making motions with her hands.)
Q. Is Loacan in Antamoc?
A. No it is not it is at another place.
Q. What is Antamoc?
A. It is a barrio and is a place calle- by the name of Antamoc.
41 Q. Do you know where Clyde lives?
A. Yes, I know he is living in Tecop.
Q. Is Tecop in Antamoc?
A. No it is not but it is near Antamoc.
Q. Is there a mountain called Antamoc?
A. Yes, there is a mountain named Antamoc above the mines.
Q. Are these mines do you speak of on the mountain called Antamoc?
A. Yes, it also Antamoc.
Q. Are the barrios Tecop, Ampasit and Antamoc situated on the mountain called Antamoc?
A. Yes.

Court takes a recess until to-morrow morning at nine o'clock..

Session of May 17th, 1904.

VICENTE CARRERA a witness for the defense is here examined by consent of all parties and the court. Said witness after being duly sworn testifies as follows:

Questions by Mr. HAUSSERMAN:

Q. Where do you live?
A. San Fernando, Province of La Union.
Q. Did you ever live in Benguet?
A. Yes.
Q. When?

A. In the years I think 1894 or 1895 until the Revolution.

Q. While you were living in this province did you ever denounce any mining claims?

A. Yes, two claims.

Q. Where?

A. In the barrio of Antamoc, one called Antamoc and one Ampasit.

Q. When were these claims denounced?

A. I am not sure, but I think it was in 1896.

42 Q. In whose name did you denounce them?

A. In the name of Agustin Illera.

Q. State to the Court just what you did in the way of denouncing these mines?

A. What I did when I denounced these mines was what was customary under the Spanish Government to mark the posts of the mines and deposit $37.50 pesos for each claim. I lost the deposit in my case because I did not take proceedings for the "demarcacion".

Q. Why did you not have the demarcacion made?

A. Because my uncle did not send me on time the authorization to make the demarcacion and we therefore lost the rights.

Q. Assuming this diagram to be a very accurate plan of the district and situation at Antamoc and Ampasit, I will get you to point out on this plan about the boundaries of the claims located by you in 1896? (Defendant's exhibit "A" marked for identification.)

A. I denounced the mines which are situated at the eastern part of the houses named Antamoc and I also denounced the mines situated on the western part of the houses which were called Ampasit. (Indicating the point marked "R" as the houses referred to.)

Q. What did you do with the papers in the matter of denunciation?

A. The papers were delivered by me to my uncle and I think they are in the office of former Gobierno of the Spanish Government.

Q. What work, if any, did you ever do on that ground after you denounced it?

A. Nothing, because they were not ceded to us with the exception of the road we made which goes to the mines.

Q. What kind of trail did you make?

A. A small trail about one metre in width leading from the main trail, which was required by the Spanish Government. Under the Spanish Government before the demarcation was made we had to built a road from the main trail to the mouth of the mine.

43 Q. When you went there to denounce the two pertinencias, did you notice a mark at the sitio of Antamoc?

A. I did not see it.

Q. Who built that road, that trail for you?

A. The Iggorrotes, but I do not know who, I asked the cabecillo there to make it for me.

Q. Did you know a man by the name of Dominguez during his lifetime?

A. Yes.

Q. Did he make any objection to you locating your claims there?

A. No, they did not make any objection. Notwithstanding I was

going to work these mines, I told them they were free to work in the mines also.

Q. Did you have any conversation with Dominguez?

A. Several times because I bought gold from Dominguez.

Q. Did you also buy gold from other Iggorrotes there?

A. Yes, from various ones.

Cross-examination by Mr. LAWRENCE:

Q. Do you know where Dominguez got this gold from?

A. I do not know, but I think he got it from Antamoc, because I know the nature of the fineness of the gold from these mines.

Q. And then the people were already working these mines you denounced?

A. Yes.

Q. Do you know a certain José Fianza?

A. Yes.

Q. Do you know whether there is any relationship between he and Dominguez?

A. I did not know at the time, but I have since learned that Dominguez was his father.

44 Q. Do you know who, according to public rumour, was the owner of those mines?

A. The public rumour among the Iggorrotes were that they were mines and property of Dominguez.

MIGUEL PICARTE, a witness for the Plaintiff after being duly sworn testified as follows:

Questions by Mr. LAWRENCE:

Q. What is your position, official position?

A. I am Municipal Secretary of the town of Itogon.

Q. Where do you live?

A. In the same Municipality.

Q. How long have you lived in this Province?

A. About twenty years (20).

Q. How many years in Itogon?

A. One and one-half years.

Q. Do you know of some mines called Antamoc and Ampasit?

A. By reference of the Iggorrote called Dominguez.

Q. Have you not seen these mines?

A. I have seen the mountain from down below and they say the mines are on top of it.

Q. Since you have known these mines whom did you understand was the owner of them?

A. The same Iggorrote Dominguez and in the year 1891 I went to Antamoc with the object of visiting the Municipal Secretary and he told me that the mountain was the mine of Dominguez.

Q. Do you know what the common rumour was amongst the Iggorrotes as to the ownership of these mines?

A. The father of Fianza.

Q. Do you know José Fianza?

A. Yes.

Q. Did you ever make a wood sign for him?
45 A. Yes.
Q. Is this the sign to which you refer? (Referring to the pieces of boards marked for identification Plaintiff's Exhibit "A.")
A. Yes.
Q. When did you make this sign?
A. About two years ago, more or less. I do not remember the date.

Cross-examination by Mr. HAUSSERMANN:

Q. Where were you living when you made that sign?
A. I was living in Trinidad then and one day I went to visit Itogon and once I was there in Itogon, Fianza requested me to make that sign for — by marking the letters out with a lead pencil, and I did so, and then Fianza traced them out.
Q. Were you not secretary when you made that sign?
A. Not yet.
Q. Where were you when that sign was made?
A. In Itogon.
Q. How long did it take to make that sign?
A. Half a day.
Q. In what house were you when you made it?
A. In the house of Fianza.
Q. Did you give it to Fianza at the time you made it?
A. Yes, because I only traced the letters with a lead pencil and then Fianza chiseled them out.
Q. And all you did was simply to mark out the letters with a lead pencil?
A. Yes.
Q. You did not do any more except trace out the letters?
A. That was all.

46 The witness EMIDGIO OCTAVIANO, after being duly sworn testified as follows:

Questions by Mr. LAWRENCE:

Q. What is your official position?
A. I am the Provincial Secretary of the Province of Benguet.
Q. Where do you live?
A. In Baguio.
Q. How old are you?
A. I am fifty-three years and nine months old.
Q. How many years have you lived in the Province of Benguet?
A. Since the 21st of October of the year 1876.
Q. Do you know the place called Antamoc?
A. Yes.
Q. Do you know of some mines in that place?
A. Yes, I know of them very well.
Q. How many years have you known these mines?
A. Since the year 1881 or thereabouts. I have known them by hearsay longer than that but I have personally and continually known of them since 1881.

Q. Do you know who was the owner of those mines in the year 1881?

A. Yes, it was Captain Dominguez Gobernadorcilla, now dead.

Q. Do you know what was the nature of his ownership?

A. It was by mere occupation. It was well known here that the Iggorrotes did not have any titles.

Q. Was it a private mine of Dominguez?

A. So I understood at that time when I went there to attend to the election. I had received permission from the Governor to go over to Antamoc one afternoon with a friend of mine.

Q. When did you last see those mines?

A. If my memory serves me correctly in the year 1886.

47 Q. Then you have not seen them since American occupation?

A. No, I only saw them from the road that goes by Boac. They can be seen from the road. I have gone along that road with Governor Pack on inspection trips and saw the mines from the road.

Q. Did Dominguez have workmen in these mines?

A. Yes.

Q. Do you know how he paid wages of the laborers?

A. I do not know that, but I do know that it was conditional according to the contract they made privately.

Cross-examination by Mr. HAUSSERMANN:

Q. What position if any, did Dominguez occupy during his life time?

A. He was a Cabeza of Barangay, and I think he was twice Gobernadorcillo.

Q. Do you know what year he was Gobernadorcillo?

A. Yes, because they were elected bi-annually.

Q. How long had you lived in Baguio before he was made Gobernadorcillo?

A. I do not remember now.

Q. Had you been here long?

A. Yes, but less than ten years.

Q. When you were over there at that time where you learned that Dominguez was the owner of that mine, did Dominguez tell you that he was owner of that mine at that time?

A. No, a man called Caballas told me as I stopped in his house.

Q. Who is Caballas?

A. He was also a Gobernadorcillo and has since died.

Q. Did you understand how much mines he had there, that is to what extent?

A. I do not know, as I had no reason to inquire about that.

48 Q. Then all you know then is that Dominguez claimed to be the owner of certain mines at Antamoc, is that right?

A. Yes, that he was the owner of the mines at Antamoc according to public opinion at that place.

Questions by the COURT:

Q. What position did you hold under the Spanish Government?

A. I was an escribiente from 1876 to 1881 and from 1881 to 1890

I was the official Interpreter of the Comandantes Militares of the Spanish Government.

Q. What were you doing from 1890 to 1898 for the Spanish Government?

A. Since 1890 to 1893 I was in Nueva Ecija and from 1893 to 1898 I was Master of the schools of primacry instruction at Daklan.

Q. Give the names of the Comandantes and years, to the best of your recollection, when you were serving as Official Interpreter to the Comandancia.

A. In 1881 Don Vicente Villeña y Sans to 1885 and part of 1886, 1886-87 and part of 1888, Don Cesario Martinez Diaz; 1888-89-90 Don Juan Aranaz Quitglas. In 1893-95 I was professor in Daklan.

FERNANDO CAOILI, after being duly sworn says: I am going on 56 years of age, I live in La Trinidad, province of Benguet.

Questions by Mr. LAWRENCE:

Q. How many years have you lived in this province?

A. Since 1874 close to thirty years.

Q. What profession have you?

A. Agriculturist.

Q. Did you ever have any official position under the Spanish Government?

49 A. I was Sergeant and Lieutenant of Cuadrilleros.

Q. Did you know of some mines in the place called Antamoc?

A. Yes.

Q. How long have you known these mines?

A. The following year. I came up in '74 and I was serving in the town and afterwards when I was a quadrillero in '75 or '76.

Q. Who was the owner then of the mines?

A. It was published by all the people there at that place that one Dominguez was the owner of those mines.

Q. Did you ever buy any gold from those mines?

A. Yes, we bought a little.

Q. Of whom did you buy this gold?

A. Dominguez.

Q. From any else?

A. No one else except Dominguez.

Q. What excavations were there then in the mines? many or a few?

A. There were many, various.

Q. How many laborers did they have there?

A. I do not know, I cannot say now. There were a good many some in the holes and others working on the surface drawing up the metal and grinding it up.

Q. Can you state more or less how many men were grinding there?

A. It differed, sometimes, eight, sometimes ten. I cannot say how many were in the holes, but about that many were working on the surface.

Q. Do you know who employed those workmen?

A. According to rumour Dominguez paid those who took it out some gold and also some of them money. This was according to what he told me himself.

Q. When did you last see these mines?

50 A. I cannot say when I saw them last.

Q. Have you seen them since the Americans came here?

A. No I have not seen them since the Americans came here.

Q. Do you know where this Dominguez lives now?

A. He is dead since a long time ago.

Q. Can you state approximately the date of his death?

A. I cannot state.

Q. Has he been dead ten years?

A. Yes, it seems to me more than ten years.

Q. Who was the owner of Dominguez's mines after his death?

A. Fianza, his son.

Q. As you understand it who is the owner today?

A. According to report and what I have seen Fianza.

Q. Do you know of what extent the mines are?

A. All that mountain they call Antamoc, I am not sure about the hill.

Q. Were there mines in all parts of the mountains?

A. I cannot say because I did not see whether there were or not.

Questions on Cross-examination by Mr. HAUSERMANN:

Q. Did you see miners working on that mountain in different places?

A. There was a hole in the mountain and I saw some men working there getting out some gold. I only saw the hole in the mountain and I saw men working there.

Q. Is the river or creek at the foot of the mountain?

A. There is a canal.

Q. Is there not a natural creek running along the foot of that mountain known as Antamoc?

A. Way down below yes.

Q. With reference to that creek where did you see the miners working there?

51 A. About 100 meters from the river.

Q. Were you ever on the side of the mountain?

A. Yes, when we were stationed there.

Q. Did you see any excavations on various parts of that mountain?

A. I did not see very well if there are many excavations or not. I did not walk around the mountain.

Q. Can you give us an idea as to the number of Iggorrotes you saw working on that mountain at various times?

A. I saw about twenty, but I do not know for certain, they said there were 10 or twelve in the holes, but I am not sure in regard to that.

Q. How long were you stationed or on duty at Antamoc with the Cuadrilleros?

A. During four years about four days each month.

Q. What four years what time?
A. 1875 to 1880.

JUAN CARIÑO, after being duly sworn testifies as follows:

Questions by Mr. LAWRENCE:

Q. What is your name residence and occupation?
A. My name is as heretofore stated, I am a farmer, less than fifty years of age, and I live in the pieblo of Tublay, Province of Benguet.
Q. Have you always lived in this province?
A. Yes.
Q. Do you know the mines of Antamoc?
A. Yes, I know them.
Q. How long have you known them?
A. Since the days of my earliest recollection.
Q. When you first knew the mines who was the owner of them?
A. Dominguez.
52 Q. Do you know José Fianza?
A. Yes, because he is the son of Dominguez.
Q. Do you know the mines that José Fianza now claims?
A. Yes, I know them because the mines of his father Dominguez are the same mines of Fianza.
Q. Are these the same mines that belonged to Dominguez when you were a little boy?
A. Yes.
Q. Do you know Toto, the father of Dominguez?
A. No, I did not see him.
Q. Have you ever heard who Dominguez got the mines from?
A. No, I did not hear.
Q. When did you first visit these mines?
A. Since I knew how to buy gold because we went there to buy gold from Dominguez.
Q. How long ago as you remember, had it been since you went there to buy gold from Dominguez?
A. I think more than thirty years ago.
Q. What did you see at the mines at that time?
A. I saw in the mines because then I knew that it was a gold mine, and I saw there many holes and excavations.
Q. Were people working in these excavations?
A. Yes, I saw people working there.
Q. How many people do you think there were working there?
A. I have se-n these mines several times as I went there several time to buy gold. Sometimes I saw five workmen there, and sometimes there were thirty workmen there.
Q. Did you talk to any of these workmen?
A. No, sir because I only talked to Dominguez.
Q. Do you know who paid these workmen?
A. That is exactly what I do not know.
53 Q. Do you know by whom they were employed?
A. By Dominguez.

Q. Do you know whether these mines were private property of Dominguez, or whether he only held them for other people?

A. I only heard that Dominguez was the only owner of those mines and never heard that ever had any associates in the mines with him.

Q. Are these mines in the mountain called Antamoc?

A. Yes, the holes were in the mountain called Antamoc.

Q. Did Dominguez have holes in various parts of the mountain or simply in one place?

A. The holes were in three places of the mountain called Antamoc.

Q. How far apart were the three holes?

A. From here to the Constabulary quarters and the others were further away.

Cross-examination by Mr. HAUSERMANN:

Q. There were many excavations, were there not, in those three places you have mentioned?

A. Yes, there were many.

Q. Did you see any Iggorrotes working on any part of that mountain other than the three places you have mentioned?

A. I only saw workmen mining who were on the other side of the creek.

Q. What was that place called on the other side of the creek?

A. I do not know the name of that place.

MATEO CARIÑO, after being duly sworn testifies as follows:

Questions by Mr. LAWRENCE:

Q. State your personal circumstances?

A. I am more than forty years of age, I live in Baguio, Province of Benguet, and am a married man.

54 Q. Are you a brother of Juan Cariño?

A. Yes.

Q. Is he older or younger than you?

A. He is older than I am.

Q. How much older?

A. More than three years.

Q. Do you know José Fianza?

A. Yes, I know him.

Q. What was his father's name?

A. Dominguez.

Q. Did you know Dominguez?

A. Yes, I know him.

Q. Did you know what was his father's name?

A. I did not see him, but I have been told that his father's name was Toto.

Q. Do you know the gold mines of Antamoc?

A. Yes, I know them.

Q. How big were you when you first saw those mines?

A. I already had a son when I saw the mines for the first time.

Q. How many sons?

A. One.

Q. How many have you now?
A. I have nine sons and daughters?
Q. When you went there for the first time who were the owners of these mines?
A. The first time when I went there I met Dominguez and he took me up to the mines and there he told me that he was the owner of those mines?
Q. Were there people working in the mines then?
A. Yes.
Q. How many?
55 A. I do not know the number of the people I saw working there.
Q. Do you know for whom they were working?
A. The first time I saw that Dominguez was the man who superintended them.
Q. What did you go there for?
A. I went there for the purpose of buying gold.
Q. Whom did you buy it of?
A. The first time I went for the purpose of buying gold I could not get any.
Q. Did you ever buy any gold there?
A. The second time I went there I was able to buy some gold from Dominguez.
Q. Is Dominguez alive now?
A. He is dead.
Q. Have you gone there since he was dead?
A. Yes.
Q. Who did you buy gold from after Dominguez was dead?
A. From Fianza.
Q. When did you go there last?
A. About three years ago during the American times.
Q. Who had the mines then?
A. Fianza, I have been told.
Q. Were these the same mines that Dominguez owned when you first went there?
A. Yes.
Q. The first time that you went to the mines did you see Fianza?
A. Yes, I saw him but he was a very little boy.
Q. You know a great many Iggorrotes, don't you?
A. Yes.
Q. Now as long as you can remember, who did the Iggorrotes say owned the mines in Antamoc?
56 A. I only know that during Spanish times because it was customary for the Iggorrotes to give presents to the Governor here and then he would say it is better that we go to Fianza and buy some gold so as to enable us to give some to the Spanish Governor.
Q. Did you ever hear any Iggorrote say that any one else ever owned these mines besides Fianza and Dominguez?
A. No.

Cross-examination by Mr. HAUSSERMANN:

Q. Do you know the extent of the place called Antamoc?
A. It is a mountain.
Q. The whole of that mountain is called Antamoc?
A. There is a place called Ampasit, Antamoc, Niug and Laocan.
Q. Are they all on that mountain?
A. No, because Laocan and Niug are far from Antamoc but Antamoc and Ampasit are contiguous.
Q. Is Ampasit on the side of the mountain?
A. No, they are not on the same hill, because there is a creek between them, Ampasit is on a little hill and Antamoc is also on a little hill, but higher than Ampasit.
Q. And the mines that you understand to belong to Fianza *is* the mine- that are in Antamoc, is that so?
A. They always worked at this place called Antamoc and the place called Ampasit during the Spanish times.

MATEO CARANTES, upon being duly sworn testifies as follows:

Questions by Mr. LAWRENCE:

Q. State your personal circumstances?
A. I am 39 years old, I live in the barrio of Laocan, jurisdiction of Baguio, province of Benguet, I am a merchant and a farmer, married.
57 Q. You were the Popular Representative last year were you not?
A. Yes.
Q. Do you know José Fianza?
A. Yes.
Q. Did you know his father Dominguez?
A. Yes.
Q. How long ago did Dominguez die?
A. I think ten years ago if I am not mistaken.
Q. Did Dominguez own any gold mines?
A. Yes.
Q. Where?
A. In Antamoc.
Q. After he died who owned the mines?
A. Fianza.
Q. How long have you known these mines?
A. I think more than twenty years.
Q. Did you ever buy gold from these mines?
A. Yes.
Q. Who did you buy it from?
A. When Dominguez was still living I bought some gold from him and then I have also bought some gold from Fianza.
Q. When you first went to the mines who was working them?
A. Dominguez.
Q. Did any one else work these mines besides Dominguez?
A. No one but Dominguez.
Q. Did you go there often?

A. Not often, three times a year.
Q. Was Dominguez always working the mines when you went there and until he died?
A. Yes, and then Fianza succeeded him.
Q. When did you go to the mines last?
58 A. In July of last year.
Q. Who was working the mines then?
A. A man by the name of Buya.
Q. Who is Buya?
A. He lives in Antamoc.
Q. Was he working the mines for himself or for some one else?
A. I have been told he was working for Fianza.
Q. Did you buy any gold last July?
A. Yes.
Q. Of whom?
A. Of Fianza.
Q. Were the mines that were being worked last July the same mines that were being worked when you first knew them?
A. Yes, the same mines but not the same holes as they move the holes to find the veins.
Q. Do you know Mr. Reavis this American here?
A. Yes.
Q. Do you know whether he has any mining claims in Antamoc or not?
A. I do not know whether he has any mines or not but I have been told that he has some in Nuig.

CHAPDAY, Iggorrote, witness for the Plaintiff, after being duly sworn testifies as follows:

Questions by Mr. LAWRENCE:

Q. State your personal circumstances?
A. I live in the barrio of Tuchin, jurisdiction of Itogon, province of Benguet.
Q. How many children have you?
A. Four children.
Q. How many grand children have you?
A. I have two.
59 Q. Do you know José Fianza?
A. Yes.
Q. Did you know his father Dominguez?
A. Yes.
Q. Did you know the father of Dominguez?
A. Yes.
Q. What was his name?
A. Toto.
Q. Did you ever work for Toto?
A. Yes.
Q. What kind of work?
A. In the gold mine.
Q. Where are these mines?
A. Antamoc.

Q. Did you work for Dominguez?
A. Yes, I worked for him during a month.
Q. In the same mines?
A. Yes.
Q. Did you ever work for José Fianza?
A. No, because I am too old.
Q. Do you know where José Fianza's mines are?
A. Yes.
Q. How long did you work for Toto?
A. During two months.
Q. What do you mean two months altogether or two months each year?
A. During the life of Toto I work for him during two months.
Q. When you worked for Toto did any one except Toto's men work in those mines?
A. No, we knew Toto as the owner of those mines.

60 Questions—cross-examination—Mr. HAUSSERMANN:

Q. Do you know Mr. Reavis?
A. Yes, I know him because I saw him in Pacdo when I went to Antamoc to get sime chili, I saw him there.
Q. Do you know the house in which Reavis lives in Antamoc?
A. Yes, I know.
Q. Did you ever work for Mr. Reavis at Antamoc?
A. No.
Q. Never at all?
A. No.
Q. Did you not make some excavations for Mr. Reavis?
A. No.
Q. Is it not a fact that for a year and a half you worked for Mr. Reavis there in Antamoc?
A. No.
Q. Is it not a fact that at periods of time you worked for Mr. Reavis and he paid you 50 cents a day?
A. No.
Q. Did you work for any one at Antamoc since 1901?
A. Yes, four years ago I remember I worked for Mr. Clyde in cleaning wood planning boards.
Q. You know where Palaye lives, don't you?
A. Yes, I know that he lives in Ticop.
Q. Did you sell any gold to the Americans?
A. No.
Q. Did you ever sell gold to Mr. Reavis, this man?
A. No.
Q. What did the Iggorrotes call this man, by what name?
A. Chun Juan.
Q. Did you work for Don Juan?
A. No.
61 Q. Did you sell gold to Don Juan?
A. No.
Q. Is it not a fact that you sold gold to Don Juan as many as two or three times?

A. No, I never sold any gold to Don Juan, although my fingers were to be cut off.

Q. Do you know of any Iggorrotes who ever worked for Don Juan?

A. I do not know whether any Iggorrotes ever worked for him or not as I never took care of it.

Q. Is your eyesight good, can you see that this is the same man that lives there in Antamoc?

A. Yes, I know him.

BALBINES, Presidente (Iggorrote) of Itogon, after being duly sworn, testifies as follows:

Questions by Mr. LAWRENCE:

Q. State your personal circumstances?

A. I am a married man, and I am Presidente of the pueblo of Itogon province of Benguet, where I reside.

Q. How many children have you?

A. I have ten children all living.

Q. How many grand children have you?

A. I have two.

Q. Have you always lived in Itogon?

A. Yes.

Q. Do you know José Fianza?

A. Yes.

Q. Do you know his father Dominguez?

A. Yes.

62 Q. What was the name of Dominguez's father?

A. Toto.

Q. Did you know him?

A. No, I did not see him.

Q. Did Dominguez own any gold mine?

A. Yes.

Q. Where were they?

A. Antomoc.

Q. Q. When did Dominguez die?

A. I think ten years ago, yes, more than ten years ago.

Q. Who owns the mines now?

A. Fianza now owns the mines.

Q. Are these the same mines that Dominguez owned?

A. Yes, because when Dominguez died Fianza took charge of the mines.

Q. How long have you known these mines?

A. Ever since I can remember.

Q. Ever since you have known these mines did Dominguez and Fianza own them?

A. Yes, since I have known these mines Dominguez and Fianza have owned those mines.

Q. Did you ever hear any other Iggorrote claiming a right in these mines?

A. No, I have never heard of any else save Fianza and his father Dominguez.

Q. Did you ever see this sign before? (Indicating Plain
Exhibit "A.")
A. I have never seen the sign, but I have only known by refer
of Comantiles.

Cross-examination by Mr. HAUSSERMANN:

Q. How do you know that Dominguez was the owner of t
mines?
63 *Q.* Because I was living in the house near to the hou
Dominguez, and besides that I only know that no other
sons ever had worked those mines besides Dominguez.

Redirect Examination by Mr. LAWRENCE:

Q. How big is your oldest gran-child?
A. Three and seven years of age respectively.

MAIRIS, after being duly sworn, testifies as follows:

Questions by Mr. LAWRENCE:

Q. State your personal circumstances?
A. I do not know how old I am, I live in Itogón, Provin
Benguet and I am a farmer.
Q. Have you ever been Presidente of Itogon?
A. Yes, and also Juez de Ganados.
Q. How many children have you?
A. I have two grand children.
Q. How old is the oldest grand child?
A. One about two and a half years of age and the other
about ten years of age.
Q. Have you always lived in Itogon?
A. Yes.
Q. Do you know José Fianza?
A. Yes, he lives on the other side of the river from my hous
Q. What is the name of Fianza's father?
A. Dominguez.
Q. Did you know him?
A. Yes, I knew him because I bought gold from hi
64 Q. Who is Dominguez's father?
A. Toto.
Q. Did you know him?
A. I was a little boy when I saw Dominguez's father.
Q. How old were you when *you* Toto died?
A. I do not know how old I was because when Toto died
yet a boy.
Q. Did he own any gold mines?
A. Yes, he had some mines because he had workmen there.
Q. After Toto died who owned the mines?
A. Dominguez.
Q. Is Dominguez dead?
A. Yes.

Q. Who succeeded Dominguez as owner of the mines?
A. Fianza, as he is the son of Dominguez.
Q. Did any other Iggorrote claim any interest in the mines besides Toto, Dominguez and Fianza?
A. No, I do not know who was interested in the mines besides them.
Q. As far back as you can remember, who did the Iggorretes say owned the mines when you were a little boy?
A. I did not hear any talking as to the owners of those mines except Toto, Dominguez and Fianza since I was a boy.
Q. Where are those mines?
A. In Antamoc.

Recess taken by the Court until two o'clock in the afternoon.

Afternoon Session.

AMEY, an Iggorrota, after being duly sworn, testifies that she does not know her age, and lives in the barrio of Antamoc, jurisdiction of Itogon, Province of Benguet.

65 Questions by Mr. LAWRENCE:

Q. What was your father's name?
A. Toto.
Q. Did you also have a brother Dominguez?
A. Yes.
Q. How big were you when Toto died?
A. I was an infant.
Q. Do you remember Toto?
A. No, I do not remember. I only know him by reference of Dominguez.
Q. Did your father Toto have mines in Antamoc?
A. Yes.
Q. Who has these mines now?
A. Fianza and ourselves.
Q. Did you ever do any work in these mines?
A. Yes, we have worked in those mines because there is where we always worked.
Q. Do you know Mr. Reavis, this man.
A. Yes.
Q. Did you ever see him there at the mines?
A. Yes, I saw him but outside of the mines where we were working.
Q. Did Mr. Reavis ever come to the mines?
A. No.
Q. Did Mr. Reavis ever talk to you about the mines?
A. No.

Cross-examination—Mr. HAUSSERMANN:

Q. Is Dominguez older or younger than you?
A. Dominguez was older than I.
Q. Were there any children between you and Dominguez?

A. Yes, but they are all dead.

66 Q. How many were there between you and Dominguez?

A. Three between us.

Q. Are there any children younger than you?

A. No, I am the youngest.

Q. Did you ever see Juan Reavis work in the mines at Antamoc?

A. Yes, I saw him working in the mines which are outside of ours.

Q. Did you ever see him working within your mines?

A. No.

Q. Did you ever sell Juan any gold.

A. No, I did never sell him any gold.

Q. Did you ever do any work for Juan?

A. No.

Q. Are you the wife of Conantiles?

A. Yes.

Q. Do you know where Juan lives in Antamoc?

A. Yes, I know.

Q. Where did you live when Juan came to Antamoc to live?

A. I was living in Antamoc when Reavis came there.

Q. How close to Reavis' house were you living?

A. The distance from this building to the house of Balpiedad.

Q. Did you often visit in Reavis' house when he first came there?

A. Yes, I have often gone to his house once a day.

Q. About how long did you live near Reavis' house?

A. I do not know how long.

Q. Was it a year?

A. I do not know.

Q. Do you know by what name this man (pointing to the defendant Reavis) is known to the Iggorrotes?

A. They call him Juan (Referring to the defendant).

67 Q. About how many moons or harvests did you live near Juan?

A. I do not know how long because we do not have any crops of rice we plant only camotes.

Q. Was it a short time or a long time?

A. Short time.

Q. Did you see any Iggorrotes working for Juan?

Objected to by Mr. Lawrence.

Objection sustained by the Court.

Exception entered by Mr. Haussermann. The Counsel for the defense expects to prove that the witness, who is a plaintiff in this case, worked at various times, was employed by the Defendant upon the mines which he now claims, and paid said witness, who is a plaintiff in this case, for such services. That the witness also at various times sold to the defendant Reavis gold: That the witness was employed at various times by the defendant in company with other Iggorrotes).

Q. Do you know whether or not the defendant Reavis purchased any gold at Antamoc or not?

A. Mr. Lawrence objects.
Objections sustained by the Court.
Same reason for exception entered by Mr. Haussermann.

LORENZO, after being duly sworn as a witness for the plaintiff, testifies and says: I do not know how old I am, I live in the jurisdiction of Itogón, Province of Benguet, I am a camote and rice planter.

Questions by Mr. LAWRENCE:

Q. How many children have you?
A. Five.
68 Q. How many grand children.
A. Two grand children.
Q. How old is the oldest one?
A. One infant on the back and about two *yeras* old.
Q. Do you know José Fianza?
A. Yes, I know him.
Q. What is his father's name?
A. Dominguez.
Q. Do you know Dominguez?
A. Yes, I know him because I bought gold from him.
Q. Do you know the name of Dominguez' father?
A. I have heard that the name of Dominguez' father was Toto but I never saw him.
Q. Did Dominguez have any mines?
A. Yes, he had mines in Antamoc.
Q. Who has these mines now?
A. Fianza.
Q. How long have you known these mines?
A. I do not know how long but I have known these mines since my earliest recollection.
Q. Have these mines been always worked since you knew them first?
A. Yes, since I have known these mines they were always worked because there were so many laborers who wanted to be paid.
Q. Who has worked these mines ever since you have known them?
Q. Dominguez and Fianza worked these mines.
Q. Did any other Iggorrotes ever make any claim to these mines?
A. No, none but Dominguez and Fianza.
Q. As long as you can remember who have the Iggorrotes considered as owners of the mines?
69 A. I did not hear any talking of any other owner of these mines except the father of Dominguez and Dominguez and his son José Fianza.
Q. What is the extent of these mines?
A. I do not know what is the extent of these mines but I know that it is large.

PASTO, witness for the plaintiff, was duly sworn and says:

I live in the jurisdiction of Itogon, I am a camote planter and I do not know how old I am.

Questions by Mr. LAWRENCE:

Q. How many children have you?
A. Two.
Q. Have you had any grand children?
A. No.
Q. Have you ever had any grand children?
A. I would have had but when my daughter was about to give birth to a child she died.
Q. A short time ago or a long time ago?
A. About ten years ago.
Q. Do you know José Fianza?
A. Yes.
Q. What was his father's name?
A. Dominguez.
Q. Did you know him?
A. Yes, I knew him.
Q. What was Dominguez' father- name?
A. I do not know him, because when Dominguez' father died I was a boy.
Q. Did Dominguez have any gold mines?
A. Yes.
70 Q. Where?
A. Antamoc.
Q. Who has these gold mines now?
A. Fianza.
Q. How long have you known these mines?
A. I was about this size when I first knew these mines (Apparently a well grown boy).
Q. Have these mines been worked ever since you have known them?
A. Yes, since I have known them they have always been worked.
Q. Who worked them since you have known them?
A. Dominguez.
Q. And after Dominguez died?
A. Fianza.
Q. Has any other Iggorrote ever made any claims to these mines?
A. No.
Q. As long as you have known these mines who have been considered the owner of them among all of the Iggorrotes?
A. Dominguez.

TONGPAPEL, a witness for the plaintiff, after being duly sworn testifies:

That I live in Itogon, province of Benguet, I am a camote planter. I do not know my age.

Questions by Mr. LAWRENCE:

Q. How many children have you?
A. Five.
Q. How big is the oldest one?
A. He is the age of a school boy.
Q. Do you know Fianza?
A. Yes.
71 Q. Do you know of the gold mines that Dominguez owned?
A. Yes, I know.
Q. Where are they?
A. Antamoc.
Q. Who owns these mines now?
A. Fianza.
Q. Have you ever worked in these mines?
A. Yes, I have worked in those mines for about three and a half weeks.
Q. Who did you work for?
A. José Fianza.
Q. In Spanish times or in American times?
A. In Spanish times I worked in these mines during the Spanish Government. And also I worked in those mines during the American Government, because it is our custom to work some weeks and then we stop, and if we want to work again we go and work.
Q. How much pay did you get during Spanish times?
A. During the Spanish Government we received the salary of one peseta each day and one time we receive twenty-five cents.
Q. Who paid that money?
A. Fianza.
Q. What did you do with the gold?
A. We only took the rocks and then took the rock to the owner of the mines, I do not know what the owner did with that gold.

Questions by Mr. HAUSSERMANN:

Q. How do you know that these mines belong to Fianza?
A. Because I have always known Fianza as the Jefe, and he saw that the mines were always worked.
Q. Did you work there much since the American occupation?
A. Since the arrival of the Americans I have worked at
72 these mines for about one and one-half weeks. Sometimes I work a day, and sometimes I did not want to work the next day, but the total of my day work amounted to about one and one-half weeks.
Q. Did you ever see Mr. Reavis working in those mines where you were working?
A. No.

TONGAY, a witness for the plaintiff, after being duly sworn testifies as follows:

I do not know how old I am, I live in Tobuban, and I am a farmer.

Questions by Mr. LAWRENCE:

Q. How many children have you?
A. Four.
Q. How old is the oldest?
A. The oldest is about to marry.
Q. Do you know José Fianza?
A. Yes.
Q. Did you know his father Dominguez?
A. Yes.
Q. Did Dominguez have gold mines?
A. Yes.
Q. Where?
A. In Antamoc.
Q. Who has these gold mines now?
A. Fianza.
Q. Did you ever work in these mines?
A. Yes, I have worked in these mines for Dominguez during the Spanish Government times.
Q. What wages did you get?
73 A. My wages were four pesos per month.
Q. Who paid you?
A. Dominguez.
Q. What did you do with the gold you got from the mines?
A. I gave Dominguez the gold.

CATEB, a witness for the plaintiff, after being duly sworn testifies as follows:

I live in Itogon, I do not know my age, I am a farmer.

Questions by Mr. LAWRENCE:

Q. How many children have you?
A. Ten.
Q. Have you any grandchildren?
A. No.
Q. Are any of your children married?
A. I have a son married.
Q. Do you know the mines in Antamoc?
A. Yes, I know.
Q. Who is the owner of these mines?
A. Dominguez.
Q. Is Dominguez alive?
A. No, he is dead.
Q. Who owns the mines now?
A. Fianza.
Q. Did you ever work in the mines?
A. Yes, I have worked in those mines in Dominguez' times?

Q. How long did you work there?
A. I have worked during a year for Dominguez.
Q. Did he pay you wages?
74 A. Yes, a peseta each day.
Q. What did you do with the gold you got?
A. It was kept by Dominguez.
Q. How long have you known these mines?
A. I do not know how long, but ever since I was able to work.
Q. Have the mines been worked regularly since you first knew them?
A. Yes.
Q. Have any one worked them besides Dominguez' men?
A. None except those men of Dominguez.

BITADIO a witness for the plaintiff, after being duly sworn testifies as follows:

I live in the place above Ampasit, jurisdiction of the town of Itogon, I am a farmer, and I do not know how old I am, and I am also an ex-presidente.

Questions by Mr. LAWRENCE:

Q. Have you any grandchildren?
A. Yes, but they have died.
Q. Do you know the gold mines in Antamoc?
A. Yes, I know them.
Q. How long have you known them?
A. I have known these mines since I have been able to work.
A. Who was the owner of the mines when you first knew them?
A. Dominguez.
Q. How do you know?
A. I have known Dominguez, because he was the Jefe when I begin to work there at the mines.
Q. What did you do with the gold you got out when you worked there?
A. I gave it to Dominguez.
75 Q. Who is the owner of the mines now?
A. Fianza.
Q. Did any one else ever work these mines except Dominguez' men?
A. No, only these laborers of Dominguez.

Questions by Mr. HAUSSERMANN:

Q. Did you work on these mines since American occupation?
A. Yes, since the arrival of the Americans I worked some, and if I want to work again I go and work.
Q. Did you ever see the defendant Reavis working there?
A. No, I did not see Mr. Reavis working there, but I have been told by my companions that they were driven away from those mines by Mr. Reavis.
Q. Where do you live with reference to these mines?
A. I live in the house above the mines.

Q. On the mountain?
A. Yes.
Q. Is the whole of that mountain mineral land?
A. No, the mines are down below my house.

WILLIAM F. PACK was duly sworn as a witness in this case and testifies as follows:

Questions by the Counsel for Plaintiff (Mr. LAWRENCE):

Q. Are you Governor of this Province?
A. Yes.
Q. How long have you been Governor Mr. Pack?
A. Since the 15th day of November 1901.
76 Q. Do you know the plaintiff José Fianza, an Iggorrote?
A. I do.
Q. Do you know the defendant, John F. Reavis?
A. I do.
Q. Are you acquainted with a certain mining property in the district of Antamoc claimed by José Fianza and certain relatives of his?
A. I do, but I have never seen it.
Q. Has any question concerning this property got before you in your official capacity as Governor of the Province?
A. It has.
Q. What way?
A. It was referred to me by José Fianza on a complain- that he was not permitted to occupy that ground.
Q. About what date was that complaint presented to you Governor?
A. It was in the Spring of 1902.
Q. I hand you a document marked plaintiff's Exhibit "B" for identification, and ask you if that is a copy of the complaint to which you refer?
A. I presume it is.
Q. What action did you take on that complaint?
A. I called the parties together at my office to see if we could arrive at some settlement of the matter.
Q. By virtue of your office you are also Justice of the Peace are you not?
A. Yes.
Q. Was this question between Fianza and Reavis conducted in the nature of a civil action before you as Justice of the Peace?
A. It was not.
Q. Was there a record made of it on your docket?
77 A. Yes, on the Justice docket.
Q. I hand you a document marked for identification Plaintiff's Exhibit "C", and ask you if that is a copy of the record on your docket?
A. It is.
Q. Was the action founded on the complaint marked Ex. B and the action marked Ex. "C"?
A. Yes.

Mr. Lawrence tenders above mentioned exhibits as evidence.

Mr. Haussermann enters an objection to the admit-ance of the Exhibit "C", but allows Exhibit "B" to be admitted without objection. We object to the admit-ance of Exhibit "C" for the reason that the witness has before testified that he did not take any action as Justice of the peace and second: For the reason of the injunction on that docket is not evidence against the defendant because it does not state the facts. It is not a court record and just simply cannot be used as a court record.)

By the COURT:

Q. Is this memorandum marked Exhibit "C", a memorandum on your docket as a Justice of the Peace based upon the complaint marked Plaintiff's Exhibit "B", which is a document dated the 2 day of January 1902, signed by José Fianza in form of a communication to you as Governor of Benguet. Is this a memorandum of the proceedings had before you?

A. I presume it is.

Q. You acted as an arbitrator between these people or did they settle their own difficulties?

A. I was there to act as an arbitrator.

Q. And as a result of your arbitration that is a memorandum made of it at the time?

A. Yes.

78 Court admits the original of this document but not the copy. The copy cannot be admitted.

(*Ruling of the Court.*)

The Court rules that the Plaintiff's Exhibit "C" is not admissable as the copy of a judicial proceeding, or for any purpose of record judicially nor of a judicial proceeding, but the original of this document may be admitted as a memorandum of the arbitration made by Governor Pack as Arbiter between these people growing out of this complaint Marked Exhibit "B", and for no other purpose than that as a memorandum of arbitration he had between these two men and not as a judicial record. Admitted upon the Court's ruling but subject to motion to strike it out.

Q. About what date Governor did the parties to this question appear before you?

A. This says May 6th 1902.

Q. According to your recollection is that about the time?

A. Yes.

Q. Please state what occurred at that meeting.

A. Mr. Reavis and Mr. Fianza and Mr. Whitmarsh appeared before me at my house one morning, with Mr. Sobral, a clerk in my office, and I think José Mendoza was acting as interpreter. Sobral took notes on what was said, at my request. Fianza claimed a pertenencia of mining ground in the district of Antamoc, and from what he said it had been handed down to him from his fathers and from which he claimed he was driven by one Holman. He had aban-

doned this territory now, and Mr. Reavis had staked it out for himself in mining claims and told him (Fianza) that he (Fianza) could not work there any longer.

Mr. Whitmarsh said that this question had been up before him, as it had before Otto Sherer, the Provincial Secretary here, and was now presented before me as Governor of the Province. Mind
79 you there was, at that time, no mining laws here affecting these mines. Mr. Reavis said he would like to know where the land was and Fianza endeavored to inform him. Several times upon being asked he stated that it was a Spanish Pertinencia of ground and upon his description of the land Mr. Reavis was not certain whether it was on his claims or some one else's. I advised that in the absence of law they settle this as amicably as they could until it would be settled definitely by the courts. And the decision arrived at between all of us was that Fianza could continue working that ground as he had heretofore without opposition, but that Mr. Reavis would not abandon his claims as staked. As far as work was concerned there would be no more difficulty between the two, and Reavis would permit it as far as he was concerned. You will find in the record, that was made by Mr. Sobral, on that docket that it reads: "The plaintiff withdrew his complaint on account of defendant's giving back property demanded." The action taken was as I stated, that the question would stand: that Mr. Reavis would allow Fianza to occupy that ground and work it and at the same time he (Reavis) would not abandon his claim.

Plaintiff withdraws his Exhibit "C".

Q. Subsequent to that meeting Governor did you give any further assistance to this matter?

A. Yes.

Q. What assistance did you give?

A. Mr. Reavis wanted to know what land it was that Fianza claimed, and I told Fianza to mark it and Fianza said I do not know how to put up the marks. He wanted me to mark it for him. It is quite a gulch down there so I told Mr. Wagner if he wanted to take a day off and mark that for Mr. Fianza he could do it, and I told him to place the stakes as Fianza told him. He took a day off and marked the posts and placed them. Mr. Wagner was also a clerk in my office.

80 Q. Was Mr. Reavis present when you gave these instructions?

A. No, he was not. I do not think Mr. Wagner was present the day we had this meeting in my office.

Q. Was it shortly after the meeting that you made these suggestions to Mr. Wagner?

A. Yes, within a few days afterwards. I told Fianza to mark it out in the presence of Reavis and Whitmarsh.

Q. Was it in a few days that he took his day off?

A. Well it was very soon.

Questions by Mr. HAUSSERMAN:

Q. Then as you understood it, as the result of that conference the matter would stand *in Statu Quo?*

A. Yes.

Q. That conference was no more than maintaining or attempting to maintain peace between these two people?

A. Yes, that is why I took it up as Pack.

Q. During your term of office as Governor has there ever been any complaints made about Reavis mistreating any of the Iggorrotes down there?

A. No. There has never been any complaints against Mr. Reavis, on the contrary his conduct has been of a very high standard and he is said to be the friend of all the Iggorrotes.

J. O. WAGNER, witness for the plaintiff, was duly sworn and testifies as follows:

Questions by Mr. LAWRENCE:

Q. What is your position?

A. I am a clerk.

81 Q. In what office?

A. Governor of the Province of Benguet.

Q. How long have you occupied that position?

A. Since November 20th 1901.

Q. Do you remember a conversation with the Governor of Benguet in the Spring of 1902 concerning a mining claim of one Fianza?

A. Yes, but I could not give any positive dates.

Q. What did you do, if anything as a result of that conversation?

A. Well the result was that I went to Antamoc to accompany Fianza over his mines. On arriving at the corner we then proceeded up to the corner and said it was his lines of the mines and we there placed the first post. I do not know what number the post was. That's on the south corner I believe and then from that post we proceeded to a point to where he had placed another post, which was the center post and the initial post or it is a post on a line with the initial post, and from there we proceeded to the next post which was the initial post and from there—I have made an error in my statement. From the post No. One or Two, I do not remember which, we proceeded to the post on the north centre part of the claim and thence to the post on the North eastern corner and thence to a post on the south western corner. After making these lines with Fianza and others, we then went to the house of an American, I believe they said that Mr. Clyde had lived there and I made this paper.

Q. Referring to that paper which you made out what date, when did you do that work?

A. The 9th day of May 1902.

Q. That paper was made on the same day by you?

A. Yes.

Q. Who indicated to you the places where the posts you have referred to should be put?

82 A. Fianza.

Q. Did he name these posts to you as the boundary or boundaries of his claim or claims?

A. If I remember correctly it was the boundaries of his claim. Of a single claim I asked him when we first started out if that was his boundary and he told me yes. Now whether he was including in one claim or claims I could not say.

Q. Did you measure or estimate the area of that claim?

A. I did not measure, but it was over, according to my estimate, 1000 feet, for I had no idea of distance over those mountains there.

Q. What was over a 1000 feet?

A. The boundaries of lines running east to west.

Q. And what did you estimate the boundary lines running north and south?

A. 600 feet from north to south and from east to west 1500 feet.

Q. How were these distances arrived at by you Mr. Wagner, did you pace them off?

A. No.

Q. Did you estimate them yourself?

A. I did myself. I took for supposition that it was a Spanish mining claim. I — very lit-le about distance. I went up the limits of a Spanish claim as I understand a Spanish claim.

Q. To the best of your estimate are these dimensions the correct ones, as shown you by Fianza?

A. Approximately, yes.

Q. You did not measure them yourself?

A. No.

Q. You took ample observation with your eye on passing over the ground?

A. Yes.

83 Q. Did you sign that memorandum?

A. Yes.

Q. Who else signed it?

A. Mr. Clyde.

Q. Who else signed it?

A. Fianza.

Q. Do you know what disposition was made of that memorandum?

A. Why it was given to Fianza if I remember correctly.

Q. Did you have stakes or posts put at the corner you have described?

A. The only one post I mentioned before the others were all placed.

Q. According to your judgment has the posts already in place there been there a long time or a short time?

A. I did not pay particular attention to the time which the posts had been there, I could not tell.

Mr. HAUSSERMAN:

Q. Was Mr. Reavis there at the time?

A. No.

Q. Do you — where he was?
A. I did not know.
Q. You knew the house in which he lived at that time?
A. I do not remember.
Q. Did you see any posts that had been placed there by Mr. Reavis?
A. No.
Q. There were four posts there then?
A. Yes.
Q. What kind of posts were they?
A. They were as I remember, about five or six feet high and in diameter I believe, I would say about three inches in diameter, if I remember correctly and the rest were larger.
Q. This paper memorandum which I refer to as in typewritten and marked in ink?
84 A. I made that in the Provincial Government Building.
Q. Before or after you went out?
A. Before I went out.
Q. There were nothing on those posts at all were there?
A. No, I do not see any.
Q. Give us an idea what they were and what were the others?
A. They were pine posts I believe. And they were not as high as the first posts that I had seen and were somewhat thick in diameter.
Q. According your best recollection state as best as you can the size of the various posts and how they were stuck in the ground and what kind of posts they were, that is, what kind of material?
A. It seems to me the first posts I came to were hard wood, but it was held in the ground with stones piled up around it, on the ground near it in a very large pile. That is the three inch post approximately. It was about five or six feet high.
Q. Now the other posts that you saw?
A. I do not know whether they had any bark on it or not. I did not pay much attention to the posts, only in just glancing at it, I made no mental notation of them.
Q. The notes, a part of this memorandum, has some red ink drawn through it and some corrections made on it, when and where were they made?
A. They were made in the house here, on account that the posts that I caused to be set are not from the west direction north east of the eastern.
Q. And what other corrections are made here?
A. The description as to the location of this post was changed.
Q. I notice another erasure in red ink and another correction?
A. I remember that error. I erased 1300 feet at the place
85 where I made out this paper, it being an error in my writing and on coming to the house I drew the red lines through it. On coming to the Provincial Government House I drew the red lines through it.
Q. What was the occasion of the correction of this line in the body of the notes?
A. In the description of the initial post here, I do not remember. I should suppose it was to describe the initial post more correctly.

Q. These corrections except that 1300 feet were made here in Baguio, on your return here, were they not?

A. I do not remember about the westernly part but I should say yes.

Q. These corrections were made after the signature were they?

A. Yes, to the knowledge of these people, Mr. Clyde and Mr. Fianza.

Q. What knowledge did you have of it?

A. Of the changing of it, but on the same ground.

Q. Did you give them notice of it after it was made?

A. I believe it was after it was made.

Q. What change of this number of feet there pointing to the words in writing "Initial post" stated about 100 feet, what change was made in that figure?

A. It seems to be changed from three to one.

Q. Then this paper after it was prepared and corrected was given to Fianza, was it?

A. Yes.

Q. Then did you receive it from Fianza?

A. No, Mr. Moir handed it to me, it was handed to me by counsel.

Q. Did Fianza at that time point out to you the claims claimed by Reavis?

A. Well, he showed me a small tunnel made by Reavis.

Q. Did he show you any of Reavis' stakes?

A. No.

86 Q. Were these corrections made while the facts were still fresh in your memory?

A. Yes.

COURT to the Witness:

A. What was the general character of the ground with reference to the timber upon it, was it an open country, or a timbered country, along the lines you went over?

A. Mostly open, and if I remember correctly in a couple of instances wooded slightly.

Q. Were all these posts set in open places or timbered places?

A. I do not remember how many were in the open and how many were in timbered places, but I remember one distinctly, it was the first post I went to and that was in the small shrubbery.

Q. And how was the initial post, the one you set?

A. It would be called an open country.

Q. And the corner post, open ground or timbered ground, or shrubbery?

A. Open ground.

Q. Your recollections are not very clear as to the surroundings of these four posts?

A. No, it is not because I was so tired when I got up there.

Q. Were there any buildings of any kind within the boundaries of that land? Did you notice any building?

A. Yes.

Q. How many and what kind?

A. There were native shacks but I could not tell whether they were boards or grass.

Q. Did you notice if any of them were occupied or not?

A. They appeared to be occupied.

Q. All of them?

87 A. I could not answer that.

Q. Did you notice whether they were any streams or natural water courses within the boundaries of these mines so laid out?

A. I believe there was a spring it was under a large shelving rock.

Q. Then a brook flowed from that?

A. Yes.

Q. Large amount of water or small amount?

A. Small.

Q. Did you notice any excavations or opening of mining works in the boundaries of that mine?

A. Yes.

Q. How many and where were they?

A. I remember only one.

Q. What was that, an excavation, burrough, hole? How would you describe it, describe it in you- own way?

A. I would described it as a hole in the ground.

Q. How deep?

A. Of a considerable depth.

Q. Round or square?

A. Round.

Q. About what diameter in you- best judgment?

A. About four feet.

Q. Were there any windlass or sweep or device of any kind harbored over or about that hole that you noticed and now remember?

A. The only thing I noticed was a ladder resting down in there.

Q. Did you decend that ladder and go into the bottom of that hole?

A. No.

Q. You mentioned a tunnel that was pointed out to you, do you remember of seeing such a tunnel or opening which was described to you?

88 A. I did not understand Iggorrote when I went down there and my assumption is that they told me that tunnel I just described was in the mines, but I could not understand the language well.

Q. Now that tunnel which was pointed out to you, was that tunnel within these four corner posts pointed out to you?

A. I could not answer.

Q. If it was not within the ground was it near the boundary line or not?

A. It was near it.

Q. Where was that burrough or hole or opening with reference to the first post that you went to?

WITNESS: The one I mentioned as the one the Iggorrote pointed out to me as Reavis Tunnel?

COURT: Yes.

WITNESS: It would be a little east of north in direction.

Q. And to your best judgment approximately at what distance?
A. 400 feet.
Q. Was it a fresh excavation or an old excavation from the appearances?
A. Fresh.
Q. Did you proceed to it at close range or did you go to the mouth of the tunnel?
A. I was close to it but not into it.
Q. Did you see the waste in front of it where the matter of the tunnel had been dumped out?
A. It had.
Q. What was the nature of the matter of that dump? Rock, or gravel or mixed?
89 A. Mixed.
Q. What character of the material predominated in the dump?
A. I would say it was mixed.
Q. Which was the most?
A. I would say rock.

Court takes a recess until May 19th, 1904.

MAY 19TH, 1904.

VICENTE BALPIEDAD, a witness for the plaintiff, after being duly sworn testifies as follows:

Questions on direct examination.

By Mr. LAWRENCE:

Q. What is your occupation?
A. Surveyor.
Q. Where is your residence?
A. In la Trinidad.
Q. Have you made a plan showing the measurements and boundaries of the mines claimed by José Fianza, in the barrio of Antamoc?
A. Yes, I have made a sketch plan except I have not run out the boundaries, lines, they being direct lines from post to post.
Q. When did you make this measurement?
A. During the month of February, I do not remember the date, although I put it in my memorandum. (Looking at the memorandum.) It was on the 10th of February 1904.
Q. Did you finish in one day?
A. No, not in one day, I worked two days and it is not finished yet.
Q. I present you the plan Marked Plaintiff's Letter "C," and ask you if it is the plan you have reference to?
A. Yes.
Q. Who showed you the lines and measurements and corners to make this measurement and plan?
90 A. José Fianza.
Q. What signs did you find there?

A. I found posts that had been up there and also holes that had been put there and they appeared to have been made by Iggorrotes, and I also saw one excavation which was perhaps made by Reavis.

Q. How many posts did you find there?

Q. Fourteen posts in addition to some posts that are inside and outside posts of Mr. Reavis, and which did not appear in the plan.

COURT:

Q. How many of these posts did you find on the boundary line?

A. Fourteen posts.

Q. How many of these were marked in any way?

A. Some of the posts which I saw were marked with the name of José Fianza.

Q. How many had his name?

A. I know there was one.

Mr. LAWRENCE:

Q. How were the lines traced, by the posts?

A. I made the measurement with an ordinary tape and compass graded to 360 degrees.

Q. How did the lines pass through the posts? Did you run a line from one post to another?

A. Yes, the line ran exactly from one corner post to the other to the interim post made sole for a line.

Q. Where did you commence the measurement?

A. We followed the Ampasit road and started from a post we found near that road within a distance of 10 meters of the side of the road towards the summit of the mountain.

Q. Can you describe more specifically the point of departure?

A. Yes.

91 Q. Well describe it then?

A. This post is held in place by stones piled about its base, and if it has not been removed, there is another post longer, which Fianza placed there so that it could be seen from a distance.

Q. Were there houses or sheds or other objects in the vicinity?

A. No houses, only small sheds about three feet distance from the road which the people pass in going to the mountain. Beginning at point "A," the point of departure, course south 48 degrees East 67-10/-00 meters or 220 feet to a post and from this post in the same course 93-20/100 meters or 305 feet and 8 inches, to the centre of the Aroja of Antamoc; and from the point of departure to a point in the aroyo de Antamoc is a steep slope as I estimate in 45 degrees and from the center of said aroja of Antamoc in the same course 113-10/100 meters or 371 feet to a post; and from the centre of said arroja to that post is an up grade, more than 50 degrees of slope at the first and in some parts a grade of 35 degrees; and from said post, this post is No. 2, of the Antamoc mines of Fianza, as explained to me by Fianza, 58 feet to the head of the Aroja at last mines of Antamoc. The width of the barranca being 26 feet and following on 112 feet to a post which is situated towards the east.

Q. The last post is a canal?

A. Yes.

Q. Please mark it with the letter "B"?

A. (Witness so marks.) And from said point marked "B" north zero south, 305 feet eight inches to a post and from said post 107 feet to a road on the same course and from the road in the same direction 330 feet to a post below which is a corner post and marked "C," and from the corner post "B" to the corner post "C" a down grade more than fifty degrees as I calculate it. From said
92 point "C" it is impossible to continue the measurement on account of the difficulty in passing over a precipice and gulch. And so on account of the difficulty the measurement was continued from the point of departure to post "A," from said point north 48 degrees west, which is on the same line 138 metres to a post near two houses or near a tree called Mango, which does not appear in the plan. This post is a corner post and marked "D"; from said post "D" south 40 degrees west 60 meters or 195 feet to a post and from said post on the same course 120 metres or 390 feet to a post; from said post on the same course 151-80/100 metres or 490 feet, to the corner post "E". From the second post from the corner post "D" to the post letter "E" 40 degrees of descent and more than 50 degrees on the lower part of the line runs through a ravine, washed out by the rain; and from this mark "E" taking direction of a post to the other side of the ravine south 40 degrees east and about 100 metres approximately, and across this line to a post on Arroja de Ampasit, and from said post south 54 degrees east 86-70/100 metres 280 feet, to a post, and from said post south 36 degrees east 28 metres, 72 feet, to a post; from said post south 30 degrees east 28 meters, 72 feet,—to a post, near the camarine of Fianza, on the right hand side of the road leading over the mountain; and from said post south 27 degrees east 210 or 64-80/100 metres to a post on corner marked "F". From this point it is impossible to measure and a straight line has been drawn to the corner "C".

Q. Is there any post between the post "F" and "C"?

A. Yes, there were but I do not know where they are. I only saw them but this is Fianza's post.

Q. Are they found approximately in a straight line?

A. Yes, I should think so.

Q. These lines which you have described, were made hori-
93 zontal or following the surface of the ground?

A. Horizontal; and although the measurements were made horizontal, owing to the steepness of the ground, and the difficulties in setting the compass, the measurements may not be exact in every particular.

Q. But approximately they are exact?

A. Yes, approximately.

Q. In what place do you find the land inside of the limits you have described?

A. As I was told by Fianza and the other Iggorrotes, who I asked about it before the survey, I was told the sitios of Antamoc and Ampasit, within the jurisdiction of the limits of the town of Itogon, in the Province of Benguet.

Q. Is there a river near?

A. Yes.

Q. Do you know what that river is called?

A. No, I did not ask the name of the river, because it is far from the measurements.

Q. To what post of the measurement is the river near?

A. The post marked "C".

Q. How far from the river according to your calculation?

A. Some thirty metres.

Q. Did you find inside of these lines some posts marked with the name of Mr. Reavis?

A. Yes.

Q. How many and where did you find them?

A. That first one that I found was on top of the mountain Ampasit, or in the mid-le of that road, the road of the mountain Ampasit.

94 Q. Can you tell us the distance and direction of this post from the post of Fianza?

A. From the post where I saw south 9 degrees east, 165 metres or 436 feet to the post marked "F".

Q. Do you remember what notice there was on that post?

A. Yes, there was written on the post so many feet, 200 feet to the west and name of Mr. Reavis.

Cross-examination by Mr. HAUSSERMANN:

Q. When was that plan you have in your hand made?

A. I commenced last night.

Q. And when did you finish it?

A. This plan was made from a rough copy which had not yet been finished.

Q. When did you make your measurements?

A. In the month of February, the 10th of February 1904.

Q. Did you have another plan in your possession day before yesterday?

A. Yes.

Q. Where is that plan?

A. It is in the office where I was working.

Q. Will you produce it?

A. Yes.

Q. Did you go around this stakes yesterday?

A. Yes.

Q. In whose company?

A. The señor on the right side of you (Mr. Lawrence, Mr. Reavis, Mr. Fianza, and Milo (Iggorrote Interpreter) and other Iggorrotes.

Q. For what object did you go there yesterday?

A. By invitation of the Fiscal, Mr. Moir.

Q. What were you instructed out there?

A. To measure the distance from Mr. Reavis' post to Fianza's camarine.

95 Q. When you made the measurements on February 10th 1904, did you make any notes on your measurements?

A. Yes, I made notes, and also put the lines to them that night to act as merely a draft.

Q. Where are these notes?

A. I did not make any notes. The notes I had reference to I had renewed from the act of the measurements, and after the measurements, after I came back here I made the transfer of my notes to them.

Q. And what did you do with your notes?

A. I understand from the notes that you mean is a description of the plans.

Q. Did you make any notes at all when you made the plans?

A. No, I did not make any notes except the measurements and description and crosses, etc.

Q. Where are those notes that you made at that time, your memorandum?

A. It is this.

Q. Where did you write this?

A. I wrote this in the act of the measurement.

Q. Out in the field?

A. Yes, in the same field.

Q. Are you certain you had that sheet of paper with you on the 10th of February 1904, and that you made the notes on that paper out in the field?

A. The memorandum I wrote with the other papers and which notes have been transferred by me on this paper on the old paper I described.

Q. When did you transpose the notes from the memorandum to this paper?

A. I wrote them in these days, during last week.

Q. And this is simply a copy of your original notes?

96 A. No, this is the original notes; they were on a small piece of paper and if they have been left on these notes I would have been confounded. And I arranged them so that one would not be confounded.

Q. Are you surveyor by profession, is that your regular business?

A. Since I was twelve years of age I have been measuring land. And I have measured almost all the lands of my town.

Q. Did you keep the notes of the work you did? or do you keep the notes of the work you do?

A. Yes, all the measurements I am making I keep them all. During the Spanish Government all of them disappeared and at this time I always keep a copy so when there is a question they can be produced.

Q. In what form did you keep that data?

A. Within my own trunk.

Q. Did you have a book within which you kept the data?

A. No, papers like this and then I put them inside of my trunk to keep them, I have no other convenient way of keeping them.

Q. Why did you destroy the data which you made in this particular case when it was your custom to keep all the data within your trunk?

A. Because these *are* were not proper and besides they were all transferred on this paper and therefore I tore them up.

Q. Why did you not complete the plan which you have been working on since the 10th of February 1904?

A. No, because I had the intention of going back there to see some other points when Fianza called me.

Q. But you did not return to make any other examination did you?

A. Yes, I returned in company with Mr. Lawrence.

Q. But you just testified that you just went down there to measure the distance from the house of Reavis to the camarine of Fianza, is that not true?

97 A. Objection entered by Mr. Lawrence to this question. Objection over-ruled by the Court.

A. Yes, it is true, it was the principal reason but I also took advantage of the occasion in order to examine the other points for the purpose of drafting and completing the plan.

Q. Did you examine the other points?

A. Yes.

Q. By what means?

A. By means of a compass.

Q. By what kind of compass?

A. The ordinary kind, graded to 360 degrees.

Q. The same compass you had on February 10th?

A. Yes.

Q. Have you that compass with you?

A. Yes, in my trunk.

Q. Your trunk is in Trinidad.

A. No, it is here.

Q. Is that the one you had yesterday (referring to a compass produced by the witness).

A. Yes.

Q. Is that the one you had the day you made the first measurement?

A. Yes.

Q. These you say are the copy of the original notes are they not?

A. Yes.

Q. And you made this (Referred to by witness as the uncompleted plan commenced on the 10th of February)?

A. Yes.

Q. When you made your measurements on the 18th day of May 1904 did you find that you had erred in your measurements of February 10th 1904.

98 A. No, I did not find any error. I only found some errors in the old plan which I made, and for that reason I did not finish it.

Q. I wish you would explain the mistakes you had found you had made in the drafting of the plan?

A. This is the mistake; this line from the corner "D" to the corner "E" and also from the corner "B" to the letter "C" in the same course because when I traced the line from the corner "B"

with the grade north zero south I did not find the longitude I only found the longitude from the said *said* corner to the post and from said post "B" I did not determine.

Q. Did you have any assistance in making the new plan?

A. No one aided me.

Q. Nor instructions from any person?

A. No.

Q. In referring to your measurement which you made on the 10th of February 1904, who was with you when you made this measurement?

A. The interested party and some Iggorrotes.

Q. How many of these 14 posts, which you have referred to, did you place there?

A. I did not place a single post.

Q. They were already there when you got there? were they?

A. Yes, according to what Fianza said they had been there a long time, for some time.

Q. What do you mean by for some time?

Objection entered as incompetent.

Objection sustained.

Q. What language did Fianza use when he spoke to you about the time the post had been put there?

99 A. Ilocano, he used the following words: "Nabayajuen á naicabil dajintos á postes," if my memory serves me right. (Translation. These posts have been here for some time.)

Q. How much of this if any were put on there by Mr. Reavis?

A. Line "E" "F" "C" (defendant's Exhibit "B" for identification only).

Q. You do mean to indicate by this plan that the cross with the Spanish words District of Antamoc is a post do you. Nor do you mean that the cross District de Ampasit is a post?

A. It means only that the discovery is only indicated by the notes (The witness indicating the notes on the map.)

Redirect examination.

By Mr. LAWRENCE:

Q. On what scale is this map drawn?

A. 1 to 3000 in metres.

Q. Please indicate on the map the points of the compass.

A. (The witness makes the same.)

Q. Can you trace a line in the direction south-east 800 feet from the post No. 2, of Mr. Reavis?

A. (The witness traces the lines as requested.)

Q. Please extend this line to the nort--west 200 feet from Reavis' post.

A. (The witness traces the line. Both these lines having been drawn in red ink.) (There are no other red ink lines or figures on the map.)

Q. Please mark the scale upon which the map is drawn.

A. (The witness so marks.)

Q. According to your best knowledge and belief is this sketch a true plan of the land pointed out to you by Fianza?

100 A. Yes, but not exact as I have explained heretofore but its position is true.

Recall José Fianza—direct examination.

Mr. Lawrence:

Q. Do you know the surveyor Vicente Balpiedad?
A. Yes.
Q. Has he surveyed your mining lands in Antamoc for you?
A. Yes.
Q. Who showed him the boundaries of that land?
A. I.
Q. How were these boundaries marked when you showed them to him?
A. Some of them had my name and others did not.
Q. What were marked?
A. My posts.
Q. Were the boundaries that you showed Vicente Balpiedad the same that were the boundaries of the land when your father owned it?
A. Yes, the boundaries are the same that my father showed to me.
Q. Are these the same boundaries that you showed me yesterday?
A. Yes, the others did not belong to my father, the others are outside of my property.

Cross-examination by Mr. Haussermann:

Q You do not mean to say that the posts which you showed to Mr. Lawrence yesterday were the same posts that were placed there by your father?

101 A. No, these posts were not placed there by my father because then it was not necessary to place posts he only showed me the boundaries.

Q. These posts that you showed the lawyer, Mr. Lawrence, the posts that were placed there by Mr. Wagner?
A. Yes.
Q. Did Holman ever have any mining claims in Antamoc as you know?
A. No, he wanted to denounce, but he did not go on with it.
Q. Is it not a fact that in 1896 Hans Holman marked out a mining claim and then marked it?
A. Yes, he marked claims in ——.
Q. In Antamoc none?
A. No.
Q. Did you ever see a post on the trail from Antamoc going to Gamoc, and where the trial forks going to Itogon, with a carabao head on it?
A. I saw several posts in these mountains. I never saw a post with a carabao head on it.
Q. Did you ever notice a tree about 3000 feet north of the inter-

section of the two trails just mentioned, which had on the first branches of said tree some stones?

A. I never noticed it.

Q. Do you know where Clyde's house is?

A. Yes.

Q. Did you ever notice a tree about 400 feet in an easterly direction from this house which had some stones in the branches of the tree?

A. I did not see that. I have gone over the trial but I did not see that.

102 Q. Do you know of any pertinencia having been staked out by a mining engineer by the name of Rafael Herrman in the year 1900 in Antamoc?

A. I do not know.

Q. Did you see any post on the mining property which you claim as your own with the name "H. Holman" and the words below it "Registered 1896"?

A. I did not see it, I only saw the posts of Mr. Reavis.

W. H. LAWRENCE, a witness for the plaintiff, after being duly sworn testifies as follows:

I live in Manila and I desire to make a statement in favor of plaintiff (Makes the following statement under oath): I went yesterday to the mining property known as Antamoc, in company with Mr. Wagner, the Surveyor Vicente Balpiedad and the plaintiff Fianza and there met the defendant Reavis; all of us together went over the lines of the property as indicated to us by Fianza and the surveyor and Mr. Wagner. The courses of nearly all the lines shown in Plaintiff's Exhibit "C" I verified as best I could, and they are in my judgment approximately correct. Under my direction the surveyor measured the distance from the post marked "F" on plaintiff's exhibit "C" to the camarine of Fianza, and from said camarine to the post marked — post no. 2 of J. F. Reavis. Mr. Reavis identified the post but informed me that the true end of his line was 200 feet to the north-west of said post, and that the post was placed where it was on account of the nature of the ground at the end of the line. Mr. Reavis informed me that his line ran 800 feet southeast from said post to post "1." I saw post No. 1, from a little distance, defendant's discovery post is situated on said line a short distance from

103 post No. 1. I did not take the data from the post on defendant's assurance that this could be obtained from the copies of location papers produced attached to the answer, which data has since been furnished me. Mr. Reavis informed me that his so-called Texas claim lies on the other side of said line just described, and that the aforesaid location papares indicate that the claim consists of a strip 100 feet wide on the northeast side of said line and a strip 900 feet wide on the southwest side of said line. Defendant's so called Clayton claim lies, as I have been informed by defendant, and I have learned from his papers northeast of the Texas claim, its side lines being a continuation of said lines of the Texas or 1000 feet. Defendant's other claim, so called Otee claim, lies, as he in-

formed me, between the Texas claim and the river at the foot of the mountain and is bounded at the other end by continuance of the Texas end lines.

Cross-examination.

By Mr. HAUSSERMANN:

A. Kindly state what lines or marks of any kind that you placed on the Plaintiff's Exhibit "C," so marked for identification.

A. I drew the lines "E" "F" and "F" "C." I noted very fully the posts placed by Mr. Wagner, near the post which appears between the corners "B" "C" and also I noted the tree beside it. I think I made no other marks on the plan.

The Plaintiff rests.

Mr. Haussermann presents in behalf of the defendant the following motion:

The defendant moves for a non-suit on the following grounds:

1. That the petition does not state facts sufficient to con-
104 stitute a cause of action against the defendant,

2. That the testimony of the Plaintiff does not constitute a cause of action against the Defendant.

3. That the allegations of the petition show affirmatively that this court has no jurisdiction of the subject matter of the action,

4. That the testimony of the Plaintiff, even if true, shows affirmatively that this court has no jurisdiction of the subject matter.

Motion over-ruled by the Court.

Exception granted the Defendant.

Plaintiff Moves: That Plaintiffs be allowed by the court to amend the first paragraph of the complaint to make the description of the property in litigation conform to plaintiff's evidence.

Motion granted by the Court.

Exception granted the defendant.

Mr. HAUSSERMANN: I desire to introduce in evidence the registration of the location notice of the defendant John F. Reavis, recorded on page 74 of the records of the mining claims of 1903, Book A, in the office of the Provincial Secretary of the Province of Benguet, recorded October 10th 1902, at 9:45 A. M. The claim being called "Texas," Defendant's Exhibit "C."

Also the registration notice of the defendant John F. Reavis, recorded October 10th 1902 at 10 A. M., the name of which claim being called "Otee," and found on page 75 of above described volume, together with all notices thereon, as well as the notice recorded on page 74 above mentioned.

Also the registration of the location notice of John F. Reavis, recorded October 10, 1902; the name of the claim being "Clay-
105 ton," recorded on page 76 of the above mentioned volume together with all notices thereon.

The book in question is the official book of record of the mining recorder of the province of Benguet and are respectively marked Defendant's Exhibits "C" "D" and "E."

Plaintiff objects to admittance of Defendant's Exhibits "C," "D"

and "E," as immaterial, irrelevant, until defendant has disproved the possessory title of plaintiff.

Objection over-ruled by the court.

Plaintiff granted an exception.

Mr. LAWRENCE: The same objection, ruling and exception is entered against all testimony tending to prove defendant's perfection of his claim until he has disproved the title of plaintiff.

JOHN F. REAVIS, defendant, after being duly sworn testifies as follows:

Direct examination by Mr. HAUSSERMANN:

Q. State your name and residence?

A. My name is John F. Reavis, I am 43 years of age. I live in Antamoc in the province of Benguet, Philippine Islands.

Q. How long have you lived in Antamoc?

A. Since February 1901.

Q. When did you arrive in the Philippine Islands?

A. In 1900 I believe, in December.

Q. What is your nationality?

A. Texan, native born citizen of the United States.

Q. What is your occupation?

A. I am a prospector.

Q. Were you that in the United States?

A. Yes.

Q. What experience have you had as a prospector?

A. Now about ten years or a little more.

106 Q. In what part of the United States did you prospect?

A. In New Mexico principally; in Arizona, Colorado, and along the Rio Grande River in Texas.

Q. When did you arrive in this province of Benguet?

A. I believe on the first of October 1900, that is, in Baguio.

Q. Did you go to Antamoc?

A. Yes.

Q. Did you do any prospecting?

A. Yes.

Q. Where?

A. I commenced here and went to Bataan creek, and I have prospected the country all about.

Q. When did you arrive at Antamoc?

A. In February of 1901.

Q. What, if anything, did you do there in reference to prospecting?

A. I went over the country and broke up rocks and looked up in gulches.

Q. Where?

A. All over the Antamoc mountain and in the river and all about.

Q. Did you make any locations?

A. Yes.

Q. Where?

A. In Antamoc.

Q. What, if anything, did you do after locating the claim at Antamoc?

A. I located several claims, put up the stakes, made out the location papers, got them recorded by the recorder Mr. Clyde, who lived in Antamoc.

Q. How was he made recorder?

A. By the election of the miners.

107 Q. Where?

A. In Antamoc, what they called Antamoc District.

Q. I hand you a paper marked for identification Defendant's Exhibit "F" and ask you to state what it is?

A. That is the location paper of the claim I call "Texas".

Q. I also hand you Defendant's Exhibit marked for identification "G" and ask you what that is?

A. It is the location paper for the "Otee" claim.

Q. Also Defendant's Exhibit "H" and ask you what that is?

A. That is the location papers of the Clayton claim.

Q. Are these the original notices?

A. Yes, of these grounds, of these claims.

Q. The defendant offers these three Exhibits "F", "G", "H", as evidence in this case.

Admitted by the Court.

Witness Reavis asks permission of the court to change or correct his testimony by stating that he arrived in the Philippine Islands in the year 1899 instead of the year 1900 as heretofore stated.

The above correction is permitted by the court.

Q. Now Mr. Reavis what claims were located by you in March of 1901, that is what are the names of the locations?

A. Arizona, Texas, Mexico, New Mexico, Otee and Apee, will more than cover this ground.

Q. State to the court just what you did when you went to Antamoc in the early part of 1901?

A. I went to Antamoc and I found ground that to my judgment was open for location and I put up my stakes. As I said before I had them put on record and proceeded to do my assessment works, as we would have done in the United States according to our rules.

108 Q. Were there any one about the place when you located?

A. Yes, Iggorrotes and some Americans on the river.

Q. Did you make any inquiry in regard to the land around there?

A. I learned when I went to the creek that it was all located on the west side of the creek and down the land along the south side of the river and the prospectors all believed that the other side of the river was the grant of land owned by Mr. Holman.

Q. What inquiries, if any, did you make of the natives that were there?

A. I made no inquiries of any of them because I could not speak the language, but they told me voluntarily that mountain belonged to Mr. Holman.

Q. Referring to what mountain?

A. Antamoc mountain.

Q. Have you been in possession of the ground located by you in March 1901, since that time?

A. Yes.

Q. Have you performed work thereon since that time continually?

A. Yes.

Q. Until when?

A. On part of it until now. I am still in possession of a part of it and a part of it this injunction injuncted me away. I have let that part of it alone since the issuance of the injunction.

Q. Do you live on one of the claims?

A. Yes.

Q. Which one?

A. I do not know whether the line commences on the Otec or Texas, I am not positive about that.

109 Q. State whether or not you employed natives to assist you in the development?

A. Yes.

Q. How many?

A. All the natives that were living around me at times.

Q. Were any objections made by any one in your possession and working of these claims?

A. None at all.

WITNESS: With the exception of that camote patch where I went to put one post, they did not want me to take the camote patch away from them.

Q. Who were they?

A. Comanteles and some other Iggorrotes, there were several there. I made them understand with the little language of myself and Mr. Clyde had, who was with me, that we did not want the camote patch; that we were not after camotes, and they left the post there.

Q. They made no further objections then did they?

A. No.

Q. When was the first objection, if any, were made to your possessing and developing these claims?

A. The first objection coming directly to me was when I got a paper from Governor Pack to come in to Baguio.

Q. Is that the morning testified to by Governor Pack as having occurred in 1902, that is the conversation?

A. Yes.

Q. At any time prior to that day did the plaintiff Fianza or other of them, in any manner object to your possession of said claims *of* to your development of them?

A. No, Sir.

110 Q. Did the plaintiff Fianza or any of the other plaintiffs, ever inform you, or give you any information that they claimed any part of the claims which you had located and were in possession of?

A. They did not.

Q. Were there any improvements of any kind on the property when you located, when you went there?
A. Yes, houses on a part of it.
Q. What became of these houses?
A. They are there yet with the exceptions of the ones that have since been torn down.
Q. How many houses are there now on your claims?
A. One I live in and another little shack, house close to mine. I have three of my own there, Iggorrote shacks.
Q. Whose houses are they?
A. Mine.
Q. How did you become the owner of these houses?
A. I bought two of them only.
Q. From whom?
A. One from Camantiles.
Q. Who is Camantiles?
A. He is one of the Iggorrote claimants in this case.
Q. From whom did you purchase the other house?
A. Marino, an Iggorrote. I bought this other house from Francisco Valencia, with the trees and camotes and bananas and pine apples.
Q. How was the contract made for the sale of these houses, in writing or verbally?
A. In writing.
Q. I hand you a paper marked Exhibit "I" for identification, state what it is?
111 A. This is evidently old Francisco's hand writing and is the paper for the ground of the two or three little camote patches, which I bought from him.
Q. Is that the contract of the sale which was given to you by Franscisco Valencio?
A. Yes.

Defendant introduces in evidence document marked Defendant's Exhibit "I" for identification.
Defendant's Exhibit "I" is admitted by the Court.
No objection entered by the plaintiff.

Q. Do you know the character of mining done in this Province by the Iggorrotes?
A. Yes.
Q. State to the Court the character of mining done by them?
A. Well it is what we call in the States "gophering".
Q. Referring to the testimony of one of the witnesses of the plaintiff concerning you driving said witness off of said property, state to the court what the facts are concerning that alleged driving off of said property.
A. I have made them quit several times.
Q. When?
A. The first time when I made them quit was after the investigation over here by Mr. Pack, the date I cannot remember.
Q. In reference to the throwing of stones?
A. Well, that was, undoubtedly in my mind, came from me try-

ing to get the Iggorrotes away because I was going to shoot mucho botos, blasting. There was one there I do not know which one it was, who did not want to go away and when one did not want to go away I would take him by the arm and tell him to get away from there, they went over and set down on a tree and the shot would go right where they were going, therefore I shouted go away from there. Evidently this is what the woman meant when she
112 said the boy told her I was going to throw rocks.

Q. Were you blasting at the time?

A. Yes, I believe it was the time.

Q. Did you ever threaten any native to drive them off or you would throw rocks at them?

A. No, it is not my "costumbre" to do that.

Q. Did you drive any of the natives from working about your property in the manner testified to by some of them prior to the claim filed by Fianza?

A. No, I allowed them to work and never troubled them and told them all who wanted to work might, but to bring me the gold, and they did bring me some and I bought the gold from them.

Q. State whether or not any of the plaintiffs in this case worked on said property prior to the time Fianza laid claim to it?

A. Yes I am positive they did. I may not know all of them. I think that every one of them except Fianza have worked for me and sold me gold at various times. But as I cannot give all the names of these people that are in that document I cannot say positively that they all did.

Q. Can you identify their faces?

A. I think that I can identify most of the Iggorrotes in Antamoc by their faces, but some of them I could not put the name and faces together.

Q. Give us the names of those who you are positive of?

A. Camantiles, Bisguey, Eslau, Amey. And what are the other names? Now, I do not remember. Maria, I do not know who she is. Well, they are the only names that I am positive about.

Q. If you should see the other plaintiffs in this case, could you state whether they were employed by you prior to the time Fianza made his complaint?

113 A. I think so.

Q. Did any of the persons, you mentioned, who worked for you on said claims, did any of them, during such employment, intimate to you they had claim to that property?

A. Never did.

Q. What character of work did they do for you?

A. They worked in tunnels and shafts doing developing work and assessment work.

Q. What rate did you pay them? How did you pay them?

A. 50 cents a day Mexican currency, and part of the time I gave them contracts.

Q. What do you mean by contracts?

A. To do a certain amount of work for a certain number of pesos, a certain number of feet of work.

Q. What stakes, if any, were upon the claim when you located there.

A. I found one small stake with "H. Holman, registered 1896," written in blue pencil, written on it.

Q. Did you find any other stakes?

A. I did not. And the Iggorrotes who showed me that one, took me over to show me the others and when we got to where he said it was, it was gone and he said that the fire had burned it up.

Q. What Iggorrote showed you the stake?

A. Polig.

Q. State the circumstances under which he showed you the stake?

A. I asked him if he knew where Holman, this German man, had put up any stakes, and he replied that he did and he went with me to show me the stakes.

Q. Did you look for any other stakes?

A. As I always look for stakes when I am locating over ground where prospectors have been before or whether they have not
114 been there before or not.

Q. Did you make a sufficient investigation of that ground as to be able to state as to whether there were any other posts on that ground located by you?

A. I have been over the ground more thoroughly than any Iggorrote ever did in his life and I never saw any stakes.

Q. Did you in fact go over that ground and see any or not?

A. Yes, and that was the only stake on the ground. There are places on ground that size on which there might be posts and man might pass by and not see them. The Iggorrotes tried to show me another one down in the grass but I did not see it.

Q. These stakes were placed there by H. Holman?

A. Yes, from what the Iggorrotes showed me would indicate the posts I had come to was the Southwest corner post of the Holman Pertinencia.

Q. I hand you a paper marked for identification "A" and ask you to state what it is?

A. This is the draft made by myself of my claims and the sitio and surroundings of Antamoc, not a correct one but approximately correct according to my calculation.

Q. I wish you would describe that mine with reference to initial location there?

A. The most prominent line marked about the old one as there is a river running round coming down in a eastern direction of the lower part of my ground and then turning in a southerly direction forming a kind of a horse-shoe.

Q. Locate your initial post of the claim known as Otec?

A. The initial post will be about here, just below the tr*ial* going to Gamoc on the south bank of the Clay river.

Q. What distance and what direction is the initial post of the claim Otec from the tr*ial* leading from Antamoc to Gamoc
115 and the tr*ial* leading to Itogon and Baguio?

A. About 1000 feet in a southerly direction.

Q. Locate the initial post of the claim known as Texas in reference to the initial post of the Otec?

A. I would have to see the location papers before I could give you the number of feet.

Court takes a recess until 9 o'clock tomorrow morning.

MAY 20TH, 1904.

Examination of the Defendant Reavis in chief suspended owing to the illness and consequent unavoidable absence of counsel of record for the Plaintiff.

WILLIAM KNOUBER, a witness for the defendant, after being duly sworn testifies as follows:

Question by Mr. HAUSSERMAN:

Q. State your age and residence?

A. I am 39 years of age and I reside at No. 39 Calle Alejandro, Manila, P. I.

Q. What is your occupation?

A. Engineer.

Q. What kind of an engineer?

A. Stationary or locomotive.

Q. How long have you been in the Philippine Islands?

A. Six years on the 16th day of July.

Q. Where did you live before coming to the Philippine Islands?

A. Different places, Black Hawk and Center City, Iowa, Bloomfield, Mo. Stoddard County.

Q. Did you follow your occupation there as locomotive engineer?

A. Yes, but in Colorado I was mining most of the time.

116 Q. How many years experience have you had in mining?

A. Five years.

Q. Were you ever in Benguet Province before?

A. Yes.

Q. When?

A. January, and February and March 1900.

Q. For what purpose?

A. Mining and prospecting.

Q. Was there any American form of Government here when you arrived?

A. No.

Q. What was here?

A. Nothing but some Iggorrotes and some Filipinos over at Trinidad.

Q. Were there any American troops here when you first arrived?

A. No.

Q. Do you know the mining district of Antamoc?

A. Yes.

Q. Were you there?

A. Yes.

Q. When?

A. On the 9th day of January 1900 at the Antamoc mining claims.

Q. Did you do any prospecting?

A. Not to amount to any thing I was just looking around that is all.

Q. Did you make any inquiries as to whether or not there were any mining claims in Antamoc?

A. Yes, that is mostly what I went there for.

117 Q. From whom did you make inquiries?

A. From the Presidente of Itogon.

Q. Do you remember the Presidente by name?

A. No.

Q. Do you know him by sight?

A. If I should see him yes.

Q. Who was with you at the time you were at Antamoc inquiring for claims?

A. It was a Spaniard by the name of Teodoro Miguel. He had lived around in this country for nine years. The scouts brought him down to Bautista. I met him there and he told me he had been up here and I took him to Manila and brought him back up here with me.

Q. I will get you to look at José Fianza and get you to state if he is the man you say was Presidente of Itogon?

A. Yes, he is the man, he was supposed to be Presidente. He went with us to the mining property.

Q. What was said and done there?

A. The Spaniard and me went down to Itogon. We looked for the Presidente or some one that knew about this mining property; who it belonged to and who was supposed to own it. This man Fianza said that he knew the property and knew it belonged to a Mr. Holman. I asked him where it was and if he would go with us. So we went up there, with Fianza. I asked Fianza to show us Mr. Hol*aman's* stakes or lines, then he said go over here further and he pointed over the ravine and we went across the river and up to the top of the hill, where the slide was, and from up there he showed us a stake and pointed to other different points down the river, then one was up near the river and another was off away from the ravine which runs up by the slide as he pointed north or northeast,

118 to the different stakes there, and then I asked him if Mr. Hol*aman* was supposed to own all this property as a mining claim and he said "Yes" It was all Mr. Holman's property." And then I asked him how many claims he had there and he said that he had one mining property. I thought it was an awful big piece for one mining claim and I asked him if he had any more and he said he had another on the river Butuan and Basig Brook and then he also said there was another claim Northeast of Trinidad that Mr. Holman owned. And then I asked him who was supposed to work that property and he did not say any one save the Iggorrotes worked it when ever they wanted to. And I asked him what they did with the gold and he said he sold it to Holman himself most of the time for six pesos for the weight of one peso. And that is about all of

the conversation I had with him. Going back he said this was Mr. Holman's property. Of course we could not do anything so I, when I went back to Manila I went to see Mr. Holman about it and he showed me maps and papers of the different pieces of property.

Q. How many claims did Holman show you? How many claims were shown you by these papers were Holman's, that is How many claims were shown you to be on the mining property known as Antamoc?

Objection entered by Plaintiff.
Objection sustained by Court.
Exception entered by Defendant.

Q. What language was used in the conversation with Fianza?
A. The Iggorrote language.
Q. Who did the talking?
A. The Spaniard.
119 Q. And it was interpreted to you?
A. Yes.
Q. Was the name of Holman used more than once in the conversation?
A. Yes.
Q. Do you remember the date of that conversation?
A. On the 9th day of January 1900.
Q. And the pointing out of this property to you was in Antamoc was it?
A. Yes, from the top of the hill above the slide.
Q. Did Fianza in that conversation make any claim to that property to you?
A. No sir.
Q. Did he make any claim to you of owning any mining claims?
A. No.
Q. Where are you employed?
A. In the Government Ice Plant Manila.
Q. How long?
A. I have been employed there since the first day of September of last year.
Q. Have you any mining interest at all in this province?
A. No.
Q. Are you in any way interested in the trial of this case?
A. No, I have not been in this province for mining purposes since 1900.

Cross-examination.

Mr. Moir:

Q. When did you come to the Islands?
A. The 16th day of July 1898.
120 Q. What were you doing between July '98 and 1900
A. A soldier.
Q. Were you a soldier when — come up here in 1900?
A. No.
Q. When were you discharged?

A. On the 31st day of July 1899.
Q. What were you doing between the 31st day of July 1899 and January 1900?
A. I was working on the Railroad part of the time, when the government had the Railroad in charge and I quit there to come up here.
Q. Were you working on the railroad when you were a soldier?
A. Yes.
Q. Were you an Engineer on the railroad?
A. Yes.
Q. Who was your fireman on the railroad?
A. I cannot speak his name but he was out of the Utah Artillery.
Q. How long was he your fireman?
A. About five months.
Q. Who was your fireman the rest of the time?
A. It was turned over to the syndicate.
Q. What did you do then?
A. I went to work at the government ice plant.
Q. As an engineer?
A. No putting up the heavy weights there.
Q. How long were you on that?
A. Between three and five months.
121 Q. Who helped you do that?
A. The Filipinos.
Q. Did you speak Spanish before you came here?
A. No.
Q. Do you speak it well now?
A. No, but well enough to get on very well.
Q. Do you speak it well enough to have your cross examination in Spanish?
A. No.
Q. You say there was no form of government here in January 1900?
A. Not that I could see there was no official here at that time.
Q. Was this in the military jurisdiction of some district?
A. There were no American soldiers here at that time.
Q. On what day did you leave Manila when you started here?
A. On the 28th day of December 1899.
Q. What day of the week was that?
A. I do not know.
Q. What day did you arrive in Baguio?
A. There was no Baguio then that I know of.
Q. At what place did you arrive?
A. At Trinidad on the 6th day of January 1900.
Q. What day of the week was that?
A. I do not know.
Q. Are you sure that it was the 9th day of January that you were in Antamoc?
A. Yes.
122 Q. What day were you at the town of Itogon?
A. I was there on the morning of the 9th of January.

Q. Who did you see there?
A. I saw the Presidente.
Q. How do you know the Presidente if there was no form of government here?
A. He said he was presidente he called himself the Cabeza, which I supposed was Presidente.
Q. How far is it up to Antamoc from Itogon?
A. I do not know what the distance is but it took us about two hours or two hours and a half to walk up there.
Q. Did the Iggorrote Fianza tell you that he had no mining property in that part of Antamoc?
A. Yes.
Q. What was his reason for going up there then?
A. To show us the property that belonged to Mr. Holman.
Q. Did you pay him anything for going up there?
A. No.
Q. Were there any other Iggorrotes with you beside Fianza?
A. No.
Q. Did you see any other Iggorrote at Antamoc?
A. Yes.
Q. Did they hear that conversation?
A. No, I did not think that they did as they were quite a distance from us.
Q. What were they doing?
A. They seemed to be working, mining, scratching around there in the bank there on the side of the river.
Q. Were they digging within the stakes which you say Fianza showed you belonged to Holman?
123 A. Yes.
Q. And the Iggorrote sais that that was Holman's mine?
A. Yes.
Q. And you say that you have never been back here since January 1900?
A. I was back in February and March.
Q. What were you doing?
A. Prospecting.
Q. Was that after you saw Mr. Holman in Manila?
A. Yes.
Q. At what place were you prospecting?
A. All over the country here, all the different places. I was here at Mr. Jones', Mr. Pulver, Mr. Robertson, Mr. Johnston and different ones whom I brought up here. I cannot remember all their names.
Q. Did you work any in the mines that you say was Mr. Holman's mines?
A. No.
Q. Were any one else working there besides the Iggorrotes?
A. No.

Redirect examination.

By Mr. HAUSSERMAN:

Q. Do you know the defendant Mr. Reavis?
A. I met him up here.

Q. Did you have any acquaintance at all with him before you came up here on this case?
A. None.

By the COURT:

Q. What was the name of that Spaniard?
A. Teodoro Miguel.
124 Q. Where does he live at the present time?
A. I do not know where he lives at the present time.
Q. Have you seen him since that time?
A. I have seen him once at Dagupan.
Q. How long ago?
A. March 1901.
Q. You say that he was residing at that time at Trinidad?
A. Yes, before that he claimed he had lived more than nine years, and he said that he had worked for different people there.
Q. What dialect did Mr. Miguel speak in talking to Fianza?
A. I suppose it was Iggorrote.
Q. You did not know what dialect it was?
A. No.
Q. Did he speak Spanish?
A. Yes, a little.
Q. Did he speak Spanish at that time?
A. No.
Q. At whose request did you come here to testify?
A. Mr. Clarke's.
Q. The Confectionary man in Manila?
A. Yes.

Redirect examination.

By Mr. HAUSSERMAN:

Q. Did you ask Mr. Clarke who told him to look you up?
A. I did not.
Q. Could there have been any mistake in Fianza knowing for what purpose he pointed out that mining claim to you?
A. No, I could not see how there could have been any mistake.

Recross-examination.

By Mr. MOIR:

Q. If you did not know the language how do you know it could not have been a mistake?
125 A. From the conversation we had.
Q. Could you understand that conversation?
A. The one that the Spaniard interpreted to me I understood it.
Q. Could you understand the Spaniard and Fianza?
A. No.
Q. How then do you know there was no mistake in pointing out the mines?
A. Because from the way the conversation ran.
Q. When did you first know this man Miguel?
A. In Bautista, in the province of Pangasinan.

Q. When?
A. December 1899.
Q. What was he doing there?
A. He was brought in as a prisoner by the Second District scouts.
Q. How long did you know him?
A. About ten days.
Q. When did you see him after that ten days again?
A. I again saw him when we went to Manila. In fact I took him with me when I went to Manila.
Q. What was he doing in Manila with you?
A. Living at my house.
Q. Was he doing anything for you?
A. No.
Q. Had you ever known him before you saw him there during these ten days?
A. No.
Q. How long was he living with you at your house?
A. About five or six days.
126 Q. Where did he go then?
A. He went with me.
Q. Where?
A. Up here in Benguet province.
Q. When was that?
A. In December 1899.
Q. Why did you return with him?
A. Because we wanted to find out about the property here.
Q. Had he told you about these mines?
A. Yes, he said they were very rich mines and that the Iggorrotes had gotten much gold from them. I was a Member of Company "B" Volunteer Infantry, Colorado.

FIANZA recalled in Rebuttal.

Questions by Mr. MOIR:

Q. Did you see the American Knouber who has just testified on the stand?
A. No, I do not know him.
Q. I mean did you just see him?
A. No, I only saw him here on the stand.
Q. Did you see him in Itogon in January 1900, or any time before this time?
A. Never, I saw Americans but not him.
Q. Did an American ever come to Itogon with a Spaniard named Teodoro Miguel, and then ever go with you to the Antamoc mines?
A. Never, and I am not acquainted with that Spaniard named Miguel, whom he said lived in Trinidad, because I know all the Spaniards who ever lived in Trinidad.
127 Q. Did you ever go with any American and Spaniard to show them the Antamoc mines, and said to them that they were not your mines?
A. I never went to Antamoc with any Spaniard or American and I never told them I did not have any mines there.

Q. Were you Presidente or Cabeza of Itogon in 1900?

A. It is true that I have been presidente of Itogon but eight years ago now. No I have not been presidente of Itogon in 1900 but I have been presidente over eight years ago under and during the Spanish Government. I was a Lieut. of volunteers when the insurrectos came here.

Cross-examination.

By Mr. HAUSSERMAN:

Q. Were you not known in Itogon in 1900 as a Captain?

A. No, because that time this place here had Captain. Captain Carantes was captain here because Itogon and Baguio then was annexed together.

Q. Were you not considered one of the principal men of Itogon in 1900?

A. No, because just at the arrival of the American here the presidente was Clemente Valdez. He was presidente of all the pueblos and he resided in Trinidad.

Q. But you have been presidente four years during the Spanish Government?

A. I have been presidente twice during the Spanish Government but eight years ago up to this date.

Q. Do you remember when the Americans came into this province, that is, what year?

A. Yes.

Q. When?

A. I think if not five years less than five years ago, when the American Negro soldiers came here.

128. Q. Did you accompany any Americans at any time since the American occupation from Antamoc and point out to them mines claimed by Holman?

A. Yes, I accompanied two Americans who were Jefe of Lands, Engineers.

Q. When did you show these Americans your mining property, what year?

A. A short time, I think about two years ago now. And they asked me to whom it belonged and I told him I owned the mines and I give them some rocks with some gold attached to them.

Q. Was that in Governor Pack's time?

A. Yes, and these two Americans went on over to Bayombong.

Q. Then prior to Governor Pack's time you did not go to accompany any Americans to Antamoc and point out any mining claims at all did you?

A. No.

ANTONIO ROBIERA, a witness, for the defense, after being duly sworn testifies as follows:

Questions by Mr. HAUSSERMAN.

Q. What is your age?
A. I am 45 years old.
Q. Where do you live?
A. In La Trinidad.
Q. How long have you lived in Trinidad?
A. Since 1890.
Q. What is your nationality?
A. Spaniard.
Q. Are you acquainted with the Antamoc mining district?
A. Yes, I have been there several times.
129 Q. Under what circumstances did you become acquainted with the Antamoc mining district?
A. Because I had the habit of going up there to sell my things and at the same time I bought gold from the Iggorrotes and paid them in merchandise.
Q. Do you know the custom that was in vogue during the Spanish time in reference to mining at the Antamoc mining district?
A. The custom which they had for working those mines there was that any Iggorrote who ever wanted to went there and worked and then sold the gold, but I never heard or knew of any one who claimed to be the owner of the mines.
Q. State to the court how you learned of that custom?
A. I learned of it by my going there to sell goods and I saw that all the Iggorrotes sold me gold, and that it was their custom for any one who wanted to to go there and get out gold from those mines.
Q. During how many years did you go to the Antamoc district to sell your goods?
A. I am not certain but during three or four times before the Revolution during the Spanish Government times.
Q. Did you buy gold from the Iggorrotes during these times?
A. Yes.
Q. Was the gold bought from the Iggorrote Miners?
A. Yes, the same ones that worked there.
Q. What part of that mountain there did you see Iggorrotes working in?
A. I never saw the mines at Antamoc, I was accustomed to staying sometimes for five or six days in the village at the foot
130 of the mountain and saw the Iggorrotes going up and down the mountain. Personally I never saw the excavations.
Q. Do you mean to say that you saw no excavations there at the Antamoc mining district?
A. I have seen the excavations from a distance. From a distance I saw where dirt had been thrown up out of the excavations but I never have been up to the mines.
Q. During any of your trips to the Antamoc mines, or during your residence in Benguet Province, did you ever hear of Fianza owning any mines at Antamoc, or claiming to own any mines?
A. No.

Q. State, if you know, what was the general understanding among the inhabitants of Benguet Province as to the ownership of the mines at Antamoc?

A. I never heard any rumours about the ownership of those mines.

Q. State whether or not it was generally understood in this province that any person was free to go to these mines and obtain gold from them upon his own account?

A. I did not hear anything that the mines were worked by any one in particular, but what I do know is that every one went there to work and get out gold, that is, every one who wanted to.

Q. Do you know the Plaintiff Fianza?

A. Yes.

Q. Did you know him during the Spanish times?

A. Yes.

Q. What position did he hold in Itogon during the Spanish times?

A. I do not know.

131 Q. Were you ever at Fianza's house during Spanish times?

A. Yes, I was there once or twice, I do not remember now. When I went there I saw him at the house of the Gobernadorcillo, but I do not know whether it was his house or the house of the Gobernadorcillo.

Q. Did you ever buy any gold from Fianza?

A. No.

Q. About how many Iggorrotes did you purchase gold from in the Antamoc mining district?

A. I could not tell, various but I could not tell now.

Q. And this gold which was purchased was purchased direct from the Iggorrotes who mined it at the mining property in Antamoc?

A. Yes.

Cross-examination.

By Mr. Moir:

Q. When were you first at the Antamoc Mining District?

A. In the first part of the year 1892.

Q. How many times were you there?

A. I do not know, I went there various times, I do not know because I have not noted down these different times, and therefore I cannot state how many times I was there.

Q. When was the last time that you went to those mines?

A. I do not remember, I cannot say because I have not the time noted down. I do not know.

Q. Have you been there since 1896?

A. I think not. I think the revolution was in 1896, and from that time I have not been there since.

132 Q. Where did you live before you came to Benguet province?

A. In Manila, I was an artilleryman in the Spanish Army.

Q. When you went to those mines did you talk the Iggorrote language?

A. No.

Q. What language did you talk to the Iggorrotes in?

A. A little Ilocano and then by signs.

Q. With whom did you stop when you went there to that district?

A. The name of the Iggorrote with whom I stopped was called Merchans.

Q. How far did he live from the mines?

A. I do not know whether it was approximately one half of a kilometre or not, his house was at the bottom of the mountain and the mines were at the top of the mountain.

Q. How do you know that the Iggorrotes who mined down there did not have a contract with the owner of these mines for working in the mines?

A. I do not know how the Iggorrotes came to work but each one of them sold me a small amount of gold which he had taken from the mines and from that I calculated that whoever wanted to went there freely to get gold and that the mines had no particular owner.

Q. Then you do not know whether or not, these Iggorrotes miner. had a contract with the owner of the mines of not?

A. No. I do not know about that.

Redirect examination.

Mr. HAUSSERMAN:

Q. The gold that you purchased from the various Iggorrotes was purchased at different prices was it not?

A. Yes.

133 Recross-examination.

By Mr. Moir:

Q. (Withdrawn).

Mr. KNOUBER, witness for the Defendant recalled.

By Mr. HAUSSERMAN:

Q. Describe the man that went with you and Fianza to point out the mine claimed by Mr. Holman at Antamoc?

A. He was a man about six feet in height, light hair, light sandy moustache, light blue eyes and the man will weigh about 180 pounds.

Q. State whether or not that man came back a second time with any other Americans?

A. Yes, he came back up here a second time.

Q. Who was with him the second time?

A. Perry Imes, Ed Pulver, Robertson, who has property here, Johnston, I do not know his initials, W. H. Cummins, Earnhardt and Griffin, who both got killed and Thomas Bogo, who got killed. I cannot give the others by name.

Q. Do you know by what name this Spaniard was known to the Iggorrotes here?

A. They called him Miguel when they shook hands with him up here.

Q. Do you know any other name by which he was known?
A. This man Fianza here shook hands with him as Miguel when he came to Itogon.
Q. Was Charles Moore with you the second time?
A. No, the first time.
134 —. But he was not with you when this mine was pointed out to you as property of Holman?
A. No one but the Spaniard. But it happened this way, the Spaniard said he knew where the mine was and I kept him still about it and I was going there to take it up because if it was what he said it was it had not been taken up, then I went to Manila to see if Holman owned the mine and I found out that Holman had the maps and papers and etc., I let it drop.

FRANCISCO VELANCIO, witness for the Defendant after being duly sworn testified that he was 76 years of age, lived in Naguilian, de La Union Province, farmer by profession.

Questions by Mr. HAUSSERMAN:

Q. Did you ever live in Benguet Province?
A. Yes.
Q. How long and during what time?
A. I was living in the Province of Benguet since 1880.
Q. What position, if any, did you occupy while in the Province of Benguet?
A. I was Secretary of some of the towns here.
Q. Do you know the Plaintiff Fianza?
A. Yes, I know him.
Q. Do you know the defendant Reavis?
A. No, I have never seen him but now.
Q. Did you ever live in Antamoc?
A. Yes.
Q. When were you living in Antamoc?
A. Since 1894.
Q. What were you doing in Antamoc?
A. I was living there because I had cattle there and it was
135 necessary for me to keep them.
Q. Do you know whether there are any mines at Antamoc?
A. Yes, there is.
Q. Did you ever hear or know of Fianza claiming to be the owner of any mines at Antamoc during Spanish times?
A. I never heard.
Q. Who worked in those mines during Spanish times?
A. The Iggorrotes who lived there and any other Iggorrotes who wanted to work there.
Q. Could any Iggorrote who wanted to work there in these mines to take out gold for his own use do so?
A. Some Iggorrotes from Tublay and Kaybayan also go there to get gold. I think they could because I never heard that any one prohibited them from so doing.

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Q. During Spanish times did any one person claim to own these mines?

A. I never observed any one prohibiting any other person from working there.

Q. If you know, state who owned the mines in Antamoc during Spanish times?

A. I did not hear of any one who owned these mines, but from the Iggorrotes I heard that Fianza owned some excavations of the mines there but that the other excavations were made by the other Iggorrotes.

Q. When did you hear that?

A. I did not hear I saw Fianza himself and his father going up to that excavation.

Q. Do you know Mr. Hans Holman?

A. Yes.

136 Q. Did he make any claims to any mines on Antamoc?

A. I have been told by him, himself, yes.

Q. When?

A. Before the arrival of the Americans here.

Q. State whether or not any papers were prepared by you for Holman relating to any mining claims, before the Americans arrived here?

A. Some papers that Mr. Holman wanted me to give to Fianza for signature.

Q. Did you sign any papers for Mr. Holman?

A. Yes.

Q. Were these papers taken to Mr. Fianza for his signature?

A. Yes, and Mr. Holman himself took these papers to Fianza to get his signature.

Q. Did you see these papers after he had taken them to Fianza for his signature?

A. Yes.

Q. Do you know what those papers were about?

A. Yes.

Q. State if you know what the said papers related to?

Plaintiff objects as being incompetent.

Objection overruled by the Court.

Exception entered by Plaintiff.

A. It related to mines.

Q. Do you know what mines it related to?

A. To the Antamoc mines.

Q. Do you know where that paper is now?

A. I do not know. I think he took it with him to Manila.

Q. What official position if any, did you occupy when you signed that paper?

A. I was Secretary of Baguio.

137 Q. What year did you sign that paper if you know?

A. I think in 1888.

Q. For the purpose of refreshing your recollection when did you first know Hans Holman about what year, if you know?

A. I think it was in 1884.

Q. Are you sure it was in 1884?

A. I think in 1886 I saw him because when he first arrived in Benguet I saw him.

Q. How many years was it before the Revolution against Spain was it that you saw Holman?

A. About six years.

Q. When you were living at Antamoc did you see Reavis there?

A. Yes.

Q. Did you have any business with him?

A. No.

Q. Did you not sell him a house or some land?

A. Yes, I sold him a house and some land.

Q. Just state to the Court what you did sell to Mr. Reavis?

A. I sold him some land which I had bought from some Iggorrotes there and I also sold him the house which was built on the same land.

Q. Did you get some papers from the Iggorrote of the sale of that house and land?

A. Yes.

Q. And did you give Mr. Reavis any papers for the sale of that house and land?

A. Yes.

Q. Look at this paper (handing witness Ex. M-rked "J") and state if that is the paper referred to?

A. Yes.

Q. Did you write this paper?

A. Yes.

138 Q. What is the date of the paper?

A. 12th day of September, I think, 1901.

Q. From whom did you buy the house and land from marked in the paper, the paper marked Exhibit "J" for identification?

A. I bought the house and land from Iggorrotes Lico, Marino, Docayad and Compalas.

Q. Did Comantiles sign this paper?

A. His name is there, he could not put his sign on because he was then sick; and besides that his companions said it was not necessary for Comantiles to sign it because he knows very well about it.

Q. Did Comantiles own any property there, any house or land?

A. He owned some of the land not in the same mountain but in the field to the house, but this house has been sold to Mr. Reavis by Comantiles.

Q. Did you buy any gold in Antamoc when you were living there?

A. Yes.

Q. Do you know whether or not the Mines in Antamoc had any particular owners during the Spanish times or not?

A. I never heard of any owners of that mine.

Q. Did you ever hear of Fianza being the owner or claim to be the owner of that mine during Spanish times?

A. No.

Q. Did you ever hear of Fianza's father Dominguez claiming to be the owner of these mines during Spanish times?

A. I want to ask you if what you mean by owners of the mine is that one person had documents or papers of ownership?

Q. I mean whether or not any one person during Spanish times claimed to have the exclusive right to mine on Antamoc?

A. I do not now.

139 —. Do you know of any one who claimed to be the owner of the mines at Antamoc during Spanish times?

A. No, no one that I know.

Q. Did you buy gold of the Antamoc Mines?

A. Yes, I bought gold.

Q. From whom did you buy gold?

A. I can not fix the names of the Iggorrotes who sold me gold if any Iggorrotes wanted to pay five cents or ten cents in gold to me I exchanged salt and clothing with them for their gold.

Q. Did they get that gold from the mines at Antamoc?

A. Sometimes some Iggorrotes got it from that mine and sometimes they got it from the rivers.

Court takes recess until two o'clock in the afternoon.

Afternoon Session.

Cross-examination.

By Mr. Moir:

Q. Have you a home also in Trinidad?

A. Yes.

Q. How much of the time since 1894 have you lived in Trinidad?

A. Some times three days I stay in Trinidad then I go back to Naguilian, then I go back to Antamoc.

Q. How much of your time since 1894 have you spent in Naguilian?

A. Sometimes a month and less than a month.

Q. What was your business that you were always running about between Trinidad, Naguilian and Antamoc?

140 A. Because I have my coffee and other plantations in Trinidad and also my house.

Q. What was your reason for going to Naguilian and staying so long?

A. I have some land there and also children.

Q. What is the longest length of time you spent in Antamoc at any one time?

A. Sometimes three days and sometimes ten days.

Q. How often did you go there each year?

A. Once a month.

Q. How many times did you see Fianza and his father go up to these mines in Antamoc?

A. I saw his father going up very often.

Q. How often did you see Fianza going up to the mines?

A. Sometimes I saw him in the mines at Antamoc.

Q. Did you see him in the mines?
A. Yes, I saw him near the excavation where they used to work.
Q. Did you see any one working in these mines while Fianza was there?
A. Sometimes I saw Fianza there with ten or less number of companions. Iggorrotes.
Q. How long ago has that been, can you fix the exact date?
A. No, I cannot remember because it was now a long time ago.
Q. When was the last time that you were at these mines?
A. The middle part of last month.
Q. What were you doing there last month?
A. For the purpose of collecting some money there from some people who owed me.
Q. Who was it that owed you that money?
A. Comantiles and Marino and some other people there.
Q. Did you ever buy any gold from the father of Fianza?
141 A. No.
Q. Did you ever buy any gold from Fianza?
A. No.
Q. What office have you held since 1894 under the Government?
A. I was Secretary in Atoc in 1894-95 and 1896.
Q. Were you ever Secretary of Baguio?
A. Yes.
Q. When?
A. In 1898.
—. When you were Secretary of Baguio where did you live?
A. I lived in the old presidencia in Baguio.
Q. Have you been Secretary any where else since 1894?
A. No, because since the establishment of the United States Government is since I left the office, when Mr. Whitmarsh was appointed Governor.
Q. How long did you hold the office of Secretary of Baguio?
A. 1898-99.
Q. What were you doing in 1901?
A. I went to Naguilian to attend to my land there and to aid my children work.
Q. What time of the year 1901 did you go to Naguilian?
A. January.
Q. How long did you stay there?
A. I cannot fix the date because each month I used to come up to Itogon, Antamoc.
Q. Did you come to Itogon and Antamoc every month in 1901?
A. Not every month because some time I failed to come up, but when I go to Antamoc to visit my cattle so I also go to Itogon to stay three days and afterwards I go back.
142 Q. How long did you stay in Antamoc when you went there?
A. I am not able to determine as I said, several months I went to Antamoc to stay there only some days.
Q. In what town did you live in 1900?
Objected to as immaterial.
Over-ruled.

A. Here in Baguio.
Q. How long has it been since you first met Mr. Holman?
A. I am not able to fix the date but as soon as he arrived here the first time I saw him.
Q. Did you help him when he went down to Antamoc in the mines in any way?
A. No.
Q. Did you not say that you took a paper over to Fianza for him to sign for Mr. Holman?

Objected to by Plaintiff.
Sustained by the Court.

Redirect examination.

By Mr. HAUSSERMAN:

Q. I hand you a paper marked for identification "J" and request you to state what that document is?
A. It is a receipt of having bought that land from the Iggorrotes whom I have already mentioned.
Q. The land which you testified to as having been sold to Mr. Reavis?
A. Yes.
Q. We desire to introduce such paper marked Exhibit "J" into evidence.

Plaintiff enters an objection to admission of said document
143 as being immaterial, incompetent and irr-levant.
Upon the statement of counsel that he can connect the subject matter with the relevancy of the exhibit same is admitted. (By the court.)
Plaintiff enters an exception.

Q. Do you know a Spaniard who used to live in Trinidad by the name of Miguel?
A. Yes.
Q. Describe that man.
A. That Spaniard was a Spanish soldier, belonging to the organization styled "Cazadores," he was a companion of Robiera, and was discharged from the service and came to Trinidad; and I was living with Robiera in Trinidad and when the revolutionary times arrived then they went to the north and afterwards they came back to Trinidad. I also remember that he has lived in Tublay in the house of Captain Juan Cariño.
Q. Was he a tall man or a short man?
A. He was a tall man.
Q. What color was his eyes?
A. They were like the American eyes.
Q. Has he light hair or dark hair?
A. His hairs were a little red.
Q. Did he have a moustache or not?
A. He had a moustache.
Q. Do you remember whether it was a light or a dark mustache?

A. Like his hair. He also came here to Baguio in 1900 and then he went to Trinidad and from there he went to Pangasinan.

Q. Do you know by what name that Spaniard was known to the Iggorrotes up here in this province?

A. He was known to the Iggorrotes by the name of Bitchie, that man was called Miguel Martin Biche, and the Iggorrotes
144 called him Biche.

HANS HOLMAN, a witness for the defendant was duly sworn and testified as follows:

Direct examination.

By Mr. HAUSSERMANN:

Q. What is your name age and residence?

A. My name is Hans Holman. I am a native of Switzerland, I live in Calumpit, Philippine Islands.

Q. How long have you lived in the Philippine Islands?

A. Ten years.

Q. Did you ever live in Benguet Province?

A. Yes.

Q. When did you come to Benguet Province?

A. In 1895.

Q. Do you know the Antamoc mining district in this province?

A. We denounced that mine and the papers which we made out were burned up in the Comandancia during the Spanish Government. We commenced the denouncement of that mine in 1896.

Q. What property did you denounce, and how much of it, and where in Antamoc?

A. 120,000 square metres is what we denounced.

Q. What part of Antamoc mountain did your claim cover?

A. On the side of the mountain on the steep slope where there are many holes.

Q. Do you know where the sitio of Antamoc is?

A. Yes.

Q. Do you know where the sitio of Ampasit is?

A. Yes, I know but I do not remember now.

145 Q. Do you know the place on the side of that hill called the slide?

A. Yes.

Q. Did your claim include the whole of that slope?

A. Yes.

Q. And what distance on either side of the slope did it cover?

A. There is nothing on top of the hill it only covers the slope.

Q. What papers if any, did you prepare in commencing said denunciation proceedings?

A. Denuncia.

Q. Who signed the denuncia?

A. The captain, an Ilocano.

Q. What is his name?

A. He is a brother of the sub-lieutenant of the Constabulary stationed here at this place.

Q. Do you know the plaintiff Fianza?

A. Yes.

Q. How long have you known him?

A. It has been ten years.

Q. Do you know whether or not he knew that you had commenced the denunciation proceedings at the mine at Antamoc?

A. Yes, because he himself signed the paper saying it was mine.

Q. When did he sign the papers?

A. I do not remember what date it was, because my father has taken the papers away with him, and the witness who was just on the stand, also signed the same here in the old Tribunal in the room corresponding to this one.

Q. Where are these papers now?

A. I do not know because my father took them away with him.

Q. Where is your father?

146 A. In Switzerland.

Q. Were the papers filed with the government officials?

A. No, not with the government but in the Tribunal is where we had to file the estimate etc., because then the Spaniard had left here.

Q. At the time Fianza signed these papers did he state or give you to understand that he claimed any part of the mountain of Antamoc as his mine?

A. I think so that is another thing, it is better to give them into the hands of Holman then the Insurrectos cannot get hold of them.

Q. Did Fianza pretend to be the owner of these mines at that time?

A. No, he never did say that. Whoever liked could get gold from that mine. Any one could get gold from that mine. When I arrived there he did not complain he only said they are mine (Holman). You may go to Itogon and to Antamoc and every one everywhere will tell you that they are mine. Now I cannot say they are my mines and neither are they his.

Q. I hand you Plaintiff's Exhibit "C" which purports to be a plan of the mine claimed in this suit by Fianza at Antamoc, which purports to include the place referred to by you as the land slide. State to what extent your denunciation took in.

A. All above the river (placing his hand on the map). The stakes are there yet if they have not been torn down. The same people there at Antamoc put them there.

Q. Did you put up any stakes of any kind?

A. We change these stakes in 1898. I went there three times. I went there in 1902. We have measured these mines three times. And we took Herman the engineer with us. It is possible

147 he has the plans with him. I know we paid him dear for his work.

Q. Did the Iggorrotes generally know that you had denounced mines at Antamoc?

A. I should say so, because they themselves say so.

Q. Do you know the Iggorrote Comantiles?

A. No.

Q. Do you know this Iggorrote (pointing to Comantiles).

A. Yes, I know him, but not by name only by sight.

Q. Do you know where he lived when you made the denunciation?

A. No, I do not know where he lives because when I saw him he was always drunk. I do not know him by name I only know his face.

Q. Do you know when the engineer Herman measured your claim?

A. I do not remember the years but it was a long time ago.

Q. Do you know where the sitio of Antamoc was when you made that denunciation?

A. Yes, I know.

Q. I hand you a paper marked for identification "A", assuming that the point upon said paper marked "R" to be the sitio of Antamoc point out where the 120,000 square metres which you denounced in 1895.

A. Above the river on the face of the mountain.

Cross-examination.

By Mr. MOIR:

Q. What is your occupation Mr. Holman?

A. Nothing.

Q. What has been your occupation since 1895?

A. Attending to my farms and mines and other business. I have other mines.

Q. You stated you came here in 1895, you mean to say
148 that you came to the Philippine Islands in 1895?

A. No, I arived in the year 1894 in the Philippine Islands.

Q. How old were you when you came to the Philippine Islands?

A. I was twenty years of age.

Q. When did you first come to Benguet?

A. In 1895.

Q. In whose name were these mines you spoke of denounced?

A. Our name.

Q. Who is our name, what do you mean by that?

A. Holman.

Q. What Holman?

A. Gustave Holman.

Q. Who help- you to lay off these mines?

A. Herman.

—. How long had you been up here before you denounced these mines?

A. A little while.

Q. About how long?

A. We went there immediately after arrival here.

Q. How long was Mr. Herman here when he went with you?

A. This is another Herman not the engineer. He was here two months.

Q. Who showed you where these mines were located?

A. Pablo Herman and the Spanish Governor.

Q. Who was he?

A. He was in the office of my father. I do not know what his occupation was. But my father after he left took possession of his mines. He was an escribiente and after he left my father's employ he turned over his mines to my father.

Q. What was the reason that these mines were placed in Herman's name instead of Holman?

A. Because my father paid for them.

149 Q. How many excavations did you find in the mine when you went there?

A. I think five or six holes.

Q. When you were there the first time was it then that Fianza signed the papers stating that you were the owner of the mines individually?

A. No, afterwards. When I went there I did not know Fianza. Every Iggorrote worked who wished.

Q. How long after was it that Fianza signed these papers?

A. Ninety seven.

Q. Did any other Iggorrote sign that paper or a similar paper besides?

A. Two chiefs rich men.

Q. Who else signed the documents?

A. Juan Cariño, Acoup. I do not remember others.

Q. In what language was that paper written?

A. Spanish.

Q. Who told the Iggorrotes what was in that document they signed?

A. I did myself.

Q. Did you do any work on that claim from 1896 until they signed that writing for you?

A. No. The Iggorrotes worked the mine whoever cared unlimited giving under contract half of the gold to me.

Q. In whose name was the Antamoc claim?

A. Us Pablo Herman.

Q. Is this paper plaintiff's exhibit "C" the plan of the ground you located?

A. It is.

150 Q. How do you know this is the same land that you denounced?

A. I went there myself.

Q. By what mark do you recognize that as the same land?

A. It is the same on which I placed stakes.

Q. Were your stakes placed in the same places as the stakes indicated on this map?

A. Yes.

Q. Did you ever sell the right you claimed to that land to any one?

A. No.

Q. Did you buy these gold mines from the Iggorrotes or any one else?

A. No. I only denounced to the Spanish Government.

Q. Did you say that Fianza signed that paper in order to keep the insurrectos from getting the mines?

A. No.

Q. What is the reason you did not continue your denuncia here?

A. Dead. I was afraid. I left that mine because I am not a miner.

Q. Was it in 1898 or 1899 when you quit the mines then?

A. No. I did not work the mines I did not care to I only bought the gold.

Q. Did you ever hire any work done on these mines?

A. No. None.

Q. Did any one pay for the work for you?

A. They worked for me. I did not pay for their work but the gold.

Q. How much of the gold did the Iggorrote laborers actually give you?

A. As I say it might be 100 or 150 ounces I paid for.

151 Redirect examination:

Q. In what capacity did you make contracts with the Iggorrotes to work those mines?

A. I did not make any contracts.

Q. Didn't I understand you to say that you made contracts with certain Iggorrotes to mine there and they give you a certain part of the gold as owner of the mine?

A. No.

Q. Did you have any contracts with Iggorrotes at all?

A. No.

Q. I mean after you denounced the mines of Antamoc?

A. Yes, I told the Iggorrotes that were working there that they must give the gold to me and not sell to any other one, that was the contract.

Q. Do you remember of Mr. Reavis going to you before he made a location in the Antamoc property and asking you whether or not you had any claim on that property?

A. Yes I remember.

Q. What did you tell him?

A. Take care whether you want to work or not: if you like to work you work. I do not care about the mines.

Questions by the COURT:

Q. Did you put the stakes on the Antamoc denouncement yourself or did an official do this for you?

A. No. I myself with the Iggorrotes of Antamoc.

Q. Was the Gobernadorcillo present?

A. No.

Q. Did you ever request the gobernadorcillo to set stakes on the limits of this Antamoc mine denounced by you and Pablo Herman in 1895?

A. We have asked but they did not do anything during the Spanish times.

152 Q. What amount of money did you pay to the Comandante when you made the denouncement in the Comandancia of Benguet for the mine of Antamoc when you presented your petition?

A. I am not sure I think about 120 pesos. I do not remember because I did not pay myself but my father.

Q. What did you do with the receipt issued on that payment?

A. It was burned up in the comandancia. My father took the receipt to Manila.

PERRY IAMS, witness for defendant upon being duly sworn testified as follows:

Questions on direct examination.

By Mr. HAUSSERMANN:

Q. State your name, age, residence and occupation?

A. I am 42 years of age, I live in Antamoc, a miner and prospector.

Q. What length of time have you been a miner and prospector? and where?

A. About twenty five years. Five or six years in Colorado, about one year in South America, about ten years in Utah and Nevada: and from 6 months to a year in Idaho and other States I can't remember exactly how much in each place and I have been here in Benguet for four years.

Q. State whether or not the Miners of Antamoc and vicinity held a meeting in February 1901 to organize a mining district.

A. Yes sir.

Q. Was that organization perfected and if so were you present and who were elected officers?

A. I was. I was present. Mr. H. G. Clyde was elected Recorder and I was elected Deputy Recorder.

153 Q. Who was elected chairman?

A. I was.

Q. Examine the book marked "Exhibit L" for identification, and state whether that book is all the records of that District.

A. It is.

Defendant offers pages 1, 2, 9, 10 and 11 of said book.

Plaintiff objects on the ground that the same is incompetent and immaterial.

The hour for adjournment having arrived the court take the objection of the Plaintiff under advisement until tomorrow morning at 9 o'clock.

MAY 21ST, 1904.

Mr. HAUSSERMAN: I desire to withdraw the offer of Exhibit "L" until further proof is offered.

Offer is withdrawn.

Continuation of the direct examination of the witness PERRY IAMS.

By Mr. HAUSSERMAN:

Q. Referring to the Records of the Antamoc Mining District marked for identification Exhibit "L", state to the court what became of that book?

A. I turned it over to Governor Pack at his request.

Q. To him officially as Governor of the Province?

A. Yes.

154 Q. What, if anything, were you required to do when that book was passed into possession of Governor Pack as Governor of this Province, with reference to payment of fees, etc.?

A. In regard to further recording?

Q. Yes.

A. What claims we had recorded after that we had to pay him for it.

Q. Was any thing done with reference to the claims already recorded?

A. Yes, if we wanted them we had to record them over again and pay him (Governor Pack) for it. I also paid for mine again afterwards, and then when the other law came out I paid for them again.

Q. Do you remember about when these records were turned over to Governor Pack?

A. No, I cannot remember the exact date. But I remember of having several conversations with Governor Pack in regard to when I should turn over the book and finally he told me to bring it in.

Q. Was it before the Act of July 1st 1902?

A. Yes, it was before that. It was before the laws came out that we could record. I do not remember just what date they came out but it was before they came out.

Q. Referring to the meeting for the purpose of organizing the Mining District of Antamoc, state whether or not public notice was given of the proposed meeting prior to the holding thereof?

A. I could not say positive now whether we posted posters or not, but I know that all the Americans here knew that the meeting was to be held prior to the holding of the meeting. But I do not know whether we posted up notices or not at the time.

155 Q. Who had charge of the matter of giving notice?

A. I do not remember now.

Q. Do you know whether he is in the district now or not?

A. I cannot remember but very little about it now. I know that we had the meeting there and tried to organize the District there and further than that I do not know anything about it.

Q. But notice was given of the meeting?

A. Yes, I am pretty sure about that because they all knew about it. Mr. Clyde and I were the only men living there at that time, the rest of the men lived quite a ways off from six to eight miles away.

Q. Again referring to the Records of the Antamoc Mining District, which are handed you, marked for identification "Exhibit

L", state whether or not these are the ones you turned over to Governor Pack.

A. Yes, it is the same book turned over.

Exhibit "L" it is conceded are the same records testified to by the witness Iams as having been delivered to Governor Pack and are the same which are here produced by the Provincial Secretary of Benguet Province.

Defendant now desires to renew his offer of Exhibit "L" in evidence.

Objected to by plaintiff as incompetent and immaterial.

Questions by the COURT:

Question. Were there any notice of this meeting given to others than American miners and prospectors?

A. Not to my knowledge.

Q. Do you know whether there was or not?

A. I am positive that I did not give any notice to any of the natives but if any one else did I do not know. I think I am
156 safe in saying that they were not notified because we did not speak their language and of course we could not tell them about it.

Q. There were Iggorrote Gold Miners living within the boundaries of the proposed district, were there not at the time?

A. Yes, I suppose they were all miners.

Q. You know that fact yourself do you not?

A. Yes.

Ruling of the Court.

The Book Exhibit "L" offered in evidence by the defendant, purports to be a book of record of an alleged Mining District organized at Antamoc, in the Province of Benguet, on February 27th 1901. It contains a memorandum of two alleged meetings; First: of the miners of that district and the second: Of the electors of the mining district for the purpose of amending the boundaries of the district: A copy of by laws purporting to have been adopted by the miners of the district when assembled at the first of the aforesaid meetings. Subsequent pages contain records of the recording of alleged mining claims or locations, as provided by the by laws contained in said volume. Neither of the records of these alleged meeting- are signed by any one. The evidence offered indicates clearly that if a notice of the meeting was given, it was given only to the American Miners and that there was at that time a large number of Iggorrote miners residing in the limits of the proposed district, and who were known to the party who acted as chairman of the alleged meeting; and that no notices were given to the native miners or an opportunity for them to participate in the meeting. If for any purpose this alleged mining district had any legal entity
157 or furnished a basis for the claim of custom or usage of miners, on the 27th day of February 1901, at the date of the alleged organization of the district, at which time these by laws

were adopted, and these boundaries fixed, the district ceased to have any existence in law and effect on the 13th day of March, 1901, when without the notice required by their own by laws to be given by posting in three places in the district written notices three days prior to the call of the meeting, the boundaries of the district were completely and wholly changed nullifying the whole proceeding. The book and its contents, the Court holds, does not come within the purview of the act of Congress of 1866, relating to mining districts, that statute not being in force and the conditions of the Spanish law in force in California and the Pacific States and Territories, under which mining districts were organized and recognized by the Courts prior to the passing of the Act of Congress are and were entirely different in the Philippine Islands where the Spanish mining law contained basic and constitutional conditions not in the law of Spain which was continued in force in the Pacific States and Territories. The title of lands containing mineral in the Philippine Islands, from the date of the exchange and ratification of the Treaty of Spain with the United States ceding these Islands became vested solely and exclusively, by the terms thereof, in the Congress of the United States, and the Spanish Law did not continue operative in these Islands. There was no mining law in the Philippine Islands by which rights could be obtained by any way, either of title or possession, but lands containing mineral between the 11th day of April 1899 and the date when the Act of the Congress of the United States approved July 1st, 1902, became effective in these islands.

158 Irrespective of this view of the Court, on examination of the book offered in evidence and marked for identification Exhibit "L," it discloses that it is a mere memorandum of action taken by a few individuals in the community included in the alleged mining district, and that it has no force and effect other than a mere personal or individual memorandum, and the objection is sustained.

To which exception is taken by the plaintiff.

H. CLAY CLYDE, a witness for the defendant after being duly sworn testifies as follows:

Direct examination.

By Mr. HAUSSERMAN:

Q. State your residence and occupation?

A. Age, 22 years, miner, and I live in Antamoc, Benguet Province.

Q. Were you present at a meeting held at Antamoc on February 27th 1901, for the purpose of organizing and perfecting a mining district at Antamoc?

A. Yes.

Q. Were you elected to any position by said meeting?

A. I was elected Secretary.

Q. And subsequently at that meeting as recorder of the district?

A. Yes.

Q. I hand you a paper marked Exhibit "L," for identification, state what that is?

A. We had a miners' meeting to form a district and that is the "Minutes" of the meeting and all records of that district.

159 —. Does that record contain a true account of the proceedings of that meeting and the acts done subsequent thereto?

A. Yes.

Q. In whose handwriting are the minutes of these two meetings?

A. My handwriting.

Q. Were you Secretary of that meeting and recorder of the other?

A. Yes.

Q. And you did not sign that?

A. I do not believe I did.

Q. But you have a personal recollection that this is a true statement of the records of these meetings?

A. Yes.

Q. And no other or further meetings were held afterwards?

A. No, not there. There was another meeting held here but we did not do anything.

Q. These are the records of the meetings and all the meetings that were held by the miners of that district under that organization?

A. Yes.

Q. At what meeting were the by-laws adopted?

A. I am not sure but think they were adopted at our first meeting. They were adopted on the 27th day of February.

Q. State whether or not, the meeting of March 13th 1901, was called pursuant to the provisions which had been adopted at the meeting of February 27th?

A. I do not remember. When we adopted these by laws and had these meetings we had no book. We kept it on a sheet of paper and put it together until we got a book up from Manila, and it is possible that some of the acts of the meeting were lost, I do not know whether they were or not.

160 —. State whether or not you have been in the district of Antamoc since the alleged organization?

A. Yes.

Q. Are you acquainted with the custom and the rules and regulations relating to the location and development of mining claims in the Antamoc District in force from February 27th 1901, to the promulgation of the Act of Congress of July 1st 1902?

A. Yes.

Q. What was the custom relating to the location of mines in that district?

A. To locate the claim and stake it off and record it within thirty days of the location and sixty days to do assessment work in.

Q. What was the custom in giving notice of the location?

A. To put your notice on your post where your ledge was at and then record it with the recorder of the district. A true copy of it.

Q. What law if any, did the custom require the locators to follow in making their location, if any?

A. We tried to follow as near as possible the United States mining laws.

Q. State whether or not the defendant Reavis filed with you any notice of location in the Antamoc District in 1901?

Plaintiff objects as not being the best of evidence, as incompetent, immaterial and impertinent.

Objection is sustained by the Court.

Q. Were mining locations recorded in the district according to the custom?

A. Yes.

161 Q. With whom were they recorded?

A. With me and when I was not there with Mr. Lams.

Q. I hand you Exhibit "L" state whether or not the location notices given by you are recorded in that book, by you or deputy recorder?

A. Yes.

By Mr. HAUSSERMAN: I offer in evidence in behalf of the defendant pages numbered 13 to 17, both inclusive, of Exhibit "L" identified by the witness as containing the location notices referred to.

Plaintiff enters objection as the book is not in evidence and as incompetent.

By the COURT:

Q. What was the custom in reference to locating and recording mining claims observed among the miners generally during the periods stated to you in the question of Mr. Hausserman?

A. I do not know generally among the Iggorrotes and others, but among the Americans it was custom to locate claims according to the United States mining laws as near as possible.

Q. And you do not know whether that custom was general and prevailing among the Iggorrote miners of the district?

A. Yes.

Q. You know it was not amongst the Ilocanos?

A. Yes.

Q. It was the custom only among the American miners?

A. Yes.

COURT: The objection is sustained.

To which an exception is taken.

162 Q. What was the custom among the Iggorrote miners in reference to mining, if you know?

A. The custom among the Iggorrotes was to dig little holes and follow up little stringers where they could see a little free gold and then they would put the rocks on rocks and grind it out and sold it for what they could get for it.

Q. Well, what else? Did the Iggorrotes ever locate any claims to mining property?

A. No, they never located any claims to property so far as I know, over there.

Q. For what length of time did the Iggorrotes usually dig in a hole so far as you noticed?

A. It would all depend how long the stringer of free gold would last, perhaps they would go into the ground ten feet and sometimes twenty feet and work as long as any gold was there and then another Iggorrote would come along and find a little gold and he would continue, and any of them that came along would work at any place they wanted to.

Q. State what the custom was as to the maintain-g of any one hole for any length of time?

A. They never claimed the ownership for any length of time. They would work in that place for one day and may be for one week because they would work in one place a week and the next place they might be working would be a mile from there in another entirely different place.

Q. What was the custom of the Ilocano miners in that district during that period of time?

A. I never knew of any Ilocano miners.

163 Q. What was the custom of the American miners in mining during that same period of time?

A. The custom was to stake the claim proper and have it recorded in the book, and do your assessment work which constituted 100 dollars' worth of work.

Q. What do you mean by making your claim proper?

A. By making it out according to the United States mining laws and record it in this book the best you knew how. We tried to live up to what was right so there would be no trouble between one another.

Q. In view of this testimony I desire to present these pages 13 to 17 inclusive.

Objected to by plaintiff as incompetent, irrelavant and immaterial.

Objection sustained by the Court.

Exception entered by the Defendant.

Q. You stated Mr. Clyde, that it was the custom among the American miners to locate their mining claims in accordance to what they believed to be the mining laws of the United States of America, on marking out the mining lands of their claim it was also the custom to give notice of such location by recording their alleged claims with the mining recorder, and you were the mining recorder of that district were you not?

A. Yes.

Q. I desire to have you look at Exhibit "L" marked for identification and state whether or not such book, or record, contains all the location notices filed with you as recorder in that district *in* pursuant to said custom or with the deputy recorder?

A. Yes, they were recorded with me or Mr. Iams.

164 Q. Looking at the record state whether or not, if you know whether John F. Reavis ever filed with you any mining claims?

A. Yes.

Q. Are these location notices that he filed for record recorded in this book, referring to Exhibit "L"?
A. Yes.
Q. Do you now when these claims were recorded with you?
A. They were not recorded with me but with the depaty recorder.
Q. Do you know when they were recorded?
A. In March, I think, I am not sure. They were recorded with the deputy recorder.

Mr. HAUSERMAN: In view of the testimony I desire to introduce these pages on behalf of defendant to show that location notices were recorded.

Objection entered by plaintiff as immaterial and incompetent.
Objection sustained by the Court.
Exception entered by the defendant.

Q. When did you first go to the Antamoc mining district?
A. On July 1900.
Q. For what purpose?
A. To prospect.
Q. Did you prospect generally over the Antamoc District?
A. Yes, I looked around quite a bit. The Iggorrotes told me that it belonged to Holman. So I looked around and as they had all the land, I came back to my camp at Babatuan and afterwards in December of the same year I went there to look it over again and I made some locations in January 1901.
Q. Handing witness paper marked for identification "J" assuming this to be an approximately accurate diagram of the Antamoc mining district, state whether or not you saw a post with a cow's head on it near the conjunction of the trials leading to Gamoc, Itogon
165 and Baguio?
A. Yes, I saw the stake there.
Q. When did you first see that?
A. The first time I went there was in July 1900.
Q. State whether or not you saw another mark in the way of a tree with some stones in the branches of it?
A. The Iggorrotes showed me that mark in December 1900. It was a tree on the side of a hill about 500 or 600 feet of my house, east, perhaps a little south of east, from my house, I marked my house with the letter "C" on the diagram.
Q. What did the Iggorrotes say that represented?
A. He said it represented limits of Holman's claim and pointed off in the direction eastern, towards another stake, so I never interfered upon that ground.
Q. At the time the Iggorrotes pointed out these marks to you, he stated they were Holman's claims, did you believe it belonged to Holman?
A. Yes.
Q. Is that the reason why you did not locate claims there?
A. Yes.
Q. Do you know where the claims of the defendant Reavis are located?
A. Yes.

Q. State whether or not the claims claimed by the defendant Reavis are within the boundaries of the ground described to you by the Iggorrote as being the claim of Holman?

A. Yes.

166 Q. How long have you lived in that district since that time, have you been there continuously?

A. No, not continuously. I have been away perhaps eight months since that time. All the time together, that I have been away from there is perhaps about eight months.

Q. Have you any mining claims in that vicinity?

A. Yes.

Q. About what distance from the Defendant's Reavis claims?

A. My claims join his.

Q. State whether or not you had any business relations with the Iggorrote miners while you have been there?

A. I never had any business relations except hire them to work for me.

Q. What kind of work?

A. Mining.

Q. On your claims?

A. Yes.

Q. When did you first know that the plaintiff Fianza claimed any mining property in that vicinity?

A. About the latter part of June or first of July 1902, just before the mining laws came out.

Q. Were you in the neighborhood of these mines prior to that time?

A. Yes.

Q. Did you ever hear any Iggorrote or any person say or intimate that Fianza had any claims there?

A. No, I never heard of any one.

Q. Do you know whether or not the defendant Reavis has been in possession of the mining claim staked out by him, as testified to by you, in March 1901?

167 A. Yes.

Q. Has he worked these mines since then?

A. Yes.

Q. Does he live on any of them?

A. Yes.

Q. Do you know the plaintiff Fianza?

A. Yes.

Q. Did you ever have any talks with him?

A. Yes, I have had several talks with him.

Q. Prior to the time that you learned that he claimed mining interests there?

A. Yes.

Q. Was any of these conversations ever about mining property?

A. No.

Q. Do you know whether or not any Iggorrotes worked for Mr. Reavis on his claims?

A. Yes, I know that they worked for him.

Q. Iggorrote Miners?
A. Yes.
Q. Did you ever purchase any gold in that district?
A. Yes.
Q. From whom?
A. I do not know the name of the Iggorrotes but I know them when I see them.
Q. Where did they get that gold?
A. They told me from Antamoc here.
Q. You stated you saw Iggorrotes working for Mr. Reavis, do you know them, would you know their faces if you saw them?
A. Yes.

168 Cross-examination.

By Mr. Moir:

Q. Were any Iggorrotes present at that meeting you held, as members of the meeting?
A. No.
Q. How many Americans were present?
A. I think there were six.
Q. Did the American miners ever recognize that the Iggorrotes had any rights in that district?
A. We never knew of it. They never objected to us staking out our claims.
Q. Have you ever worked any where else except on your mines since you have been up here?
A. Yes, I have worked in San Fernando. I was working there for the Government, and I have also worked on the Benguet road for four months.
Q. Have you worked any where else besides these two places after these eight months?
A. No.
Q. Do you understand the Iggorrote language very well?
A. No, not very well but I talk some of it.
Q. How long have you been able to talk some of it?
A. Since last year.
Q. How can you tell what the custom of the Iggorrotes miners has been in the Antamoc district for the last twenty or thirty years?
A. From what I observed and from what I saw them doing. Some of them talk Spanish and they told me about it.
169 —. Did you ever observe any of their custom prior to 1900?
A. No, I was not there then.
Q. I show you here Defendant's Exhibit "A" filed in this case please point out on this the location of the work in regard to this mine, these claims, that Mr. Reavis has done?
A. He has done work down below his house here, south of his house on Otec claim. It is tunnel work. I do not know whether it is on the Texas or Otec, it was about six feet deep the last time I was in it, and there was a lot of work done after I was in it the last

time. It is on a little gulch which comes down from the big slope. Down the little creek here on the slope.

Q. Well where abouts is his tunnel on the Clayton claim?

—. It is over here, marking on the Otec claim a letter "X" and on the Texas claim "Y" and on the Clayton claim "Z." About 160 feet was done on the Clayton claim the last time I was there and that was over a year ago.

Recalled—PERRY IAMS

Questions by Mr. HAUSSERMAN:

Q. When did you first visit the district which the Americans attempted to organize and known as the Antamoc Mining District?

A. The latter part of December 1900.

Q. Was it before the meeting of the miners, before the organization of that district?

A. Yes.

Q. Did you prospect over that country?

A. Yes.

— Do you know where the defendant Reavis has located claims there?

A. Yes.

170 Q. Did you prospect over that country?

A. I went over that country but I did not prospect it.

Q. Why not?

A. The secretary of the barrio there, when I went over there the first time, told me that property there belonged to Mr. Holman, so I did not waste any time prospecting there.

Q. Did you make any attempt to find out what property Holman claimed there?

A. Yes, I asked the secretary to show me the extent of the Holman's claim there, and he sent an Iggorrote with me to show me the stakes which Holman had placed up there.

Q. Do you know what ground was pointed out to you as being claimed by Holman at that time?

A. Yes, I remember very distinctly that ground.

Q. Point out to the court the ground that was pointed out to you as being Holman's claim with reference to the claim now held and claimed by the defendant Reavis.

A. Well, Reavis' claims would be inside of the lines that they claimed belonged to Holman at that time.

Q. The whole of his claims would be inside?

A. Yes, all of his claims would be inside of the line.

Q. Did you see any mark down there south of the river near the junction of the trails which run to Camoc, Itogon and Baguio

A. Yes.

Q. What kind of post did you see there?

A. A post about seven or eight feet high with a carabao's head fixon to it.

Q. Was there any other sign seen by you?

A. Yes, a tree north of there, or a little west of north, and locked

up in the branches of the tree were some stones, and they told me it was the other corner of Mr. Holman's ground.

171 Q. Handing you a paper marked for identification defendant's Exhibit "J" take it and point out and marked the points indicated by you by the letters "A" and "B."

A. The carabao head should be about here (Making a letter "A") and the tree with the stones in the fork of it should be here some place (Making a letter "B").

Q. In what direction from these points included Holman's claims?

A. Draw a line from where the carabao's horns were to the tree, the claims would lay side of that.

Q. Who called your attention to these points?

A. The Iggorrote who had shown to me Mr. Holman's claim.

Q. Did he indicate any other point?

A. He showed me three stakes and then pointed to where the other corner was, but I did not go down there to it because it was immaterial to me at that time.

Q. Do you know where the three stakes were?

A. Yes.

Q. Indicate the same on this?

A. I do not think this will be an exact place, but I will put them as near as I can remember (Witness marks "BD").

Q. When these marks were pointed out to you, what if any thing, did you do?

A. I went on the outside of these lines and went to prospecting.

Q. State whether or not you did anything to conform to what the Iggorrote had said to you in reference to Holman's claims?

A. Nothing.

Q. What was the name of the secretary who informed you Holman had that claim.

A. Nicolas Cemilang.

172 Q. Do you know what he was secretary of?

A. He said he was acting of that barrio.

Q. What age was he?

A. A middle aged man.

Q. Where is he now?

A. In the town of Naguilian.

Q. Have you been in that district much since that time?

A. Nearly all the time.

Q. Do you know when Mr. Reavis located there?

A. Yes.

Q. When?

A. I think that he located his first claims there in March 1901.

Q. Do you know whether or not he staked them out in 1901?

A. Yes.

Q. How do you know?

A. Well, I saw his stakes there. I supposed he put them there as he claimed the ground and the stakes were placed up by some one and I was not with him at the time when he put them up.

Q. Did you see any location notices?

A. Yes.

Q. How many were there?
A. I could not state now how many claims there were there.
Q. About how many?
A. I think that there were five or six claims there at the place he had.
Q. This was in 1901?
A. Yes.

Q. What position, if any, did you occupy in reference to
173 the alleged mining district organized on the 27th of February 1901?

A. I was the deputy recorder.

Q. State whether or not Reavis made any record of the claims staked out by him?
A. They were recorded.
Q. Where?
A. With me at Antamoc as Deputy Recorder his claims were made out by me as deputy recorder.
Q. What kind of papers did he record?
A. Notices of location.
Q. What became of these papers?
A. I handed them back to him after he recorded them.
Q. What did you record them in?
A. In the book which we kept for recording claims.
Q. I hand you herewith defendant's Exhibit "L," so marked for identification, and call your attention to pages marked in ink 13 to 17 inclusive and ask you to state what they are.

Objection entered by plaintiff as incompetent and immaterial.
Objection sustained by the Court.
Exception entered by the defendant.

Q. Can you state on what pages in said Exhibit marked "L," are the location notices, as having been handed to you, and which were recorded by Reavis?

Objection by plaintiff as incompetent and immaterial.
Objection sustained by the Court.
Exception entered by the defendant.

Q. Do you know the custom of the Iggorrote miners in relation to mining property during your stay at Antamoc District?
174 A. As near as I could find out the Iggorrote miners mine wherever he could find any gold regardless of any claims.
Q. Did any Iggorrote during the time that you were there ever claim any mining property?
A. No, not to my knowledge.
Q. State more specifically if you know what their custom was in reference to mining. What was the character of their mining?
A. From what I have seen there, they hunt for rich stringers and when they find one they follow it and worked it out, like we call gophering in the United States.
Q. State whether or not they ever mined with the idea of holding any part of the ground permanently?

Objected to by defendant as immaterial and incompetent.
The objection is sustained by the Court.

Q. Did any Iggorrote claim any mining property there to you, or within your knowledge?
A. No.
Q. Do you know the plaintiff Fianza.
A. Yes.
Q. When did you first learn that Fianza claimed any mining property in that district?
A. I do not remember the exact date. It was quite a long time after we had been living there at Antamoc, about a year after before I knew he ever claimed any mining land there.
Q. Was Mr. Reavis in possession of mining claims there many months before you heard of Fianza claiming any interest in that property?
A. Yes.
175 Q. During that time did you see any Igorrotes working for Reavis?
A. Yes.
Q. How many?
A. I do not remember how many, because I was working for him myself at that time, and part of that time he had eight and part of that time he had six Iggorrotes working for him.
Q. When were you working for Mr. Reavis?
A. I could not state the exact date. I think it was in 1901, in August. I am not positive but to the best of my knowledge and recollection it was in 1901.
Q. How long did you work for him?
A. About two weeks.
Q. What kind of work were you doing for Mr. Reavis?
A. Driving tunnels.
Q. Where?
A. On his claims in Antamoc.
Q. Can you state whether or not that work was done on the same property which he now claims?
A. Yes, it was the same.
Q. Did any one object to you, to Mr. Reavis or any of his other employees working on said claims?
A. No.
Q. Did you work openly and above board during that time?
A. Yes.
Q. You were working during the daytime?
A. Yes.
Q. Where were you living at that time?
A. In Antamoc.
176 Q. With whom?
A. In my own house.
Q. Where was Reavis living at that time?
A. On his claims in the same house he is living in now.
Q. Were you there frequently, at times when you were not employed by Reavis?

A. Yes, I often went there to his house.
Q. State whether or not you ever saw persons working for him during that time?
A. Yes, I know that he was working there at that time.
Q. State whether or not you ever bought gold from that District?
A. Yes.
Q. From whom?
A. From the Iggorrotes.
Q. Do you know where that gold was obtained from?
A. They told me that it came from Antamoc mines.
Q. Was it purchased direct from the miners?
A. Yes.

Cross-examination.

By Mr. Moir:

Q. When was it that this Nicolas Comilang sent an Iggorrote to show you the mining claim you spoke of?
A. The latter part of December 1900. The first time that I visited Antamoc.
Q. Do you know the names of many Iggorrotes there?
A. I know the names of a few of them and the faces of nearly all of them.
177 Q. Who was the Iggorrote who went with you to show you that mining property?
A. I do not know his name?
Q. Have you seen him here in the court room?
A. I do not remember of having seen him here, in fact I have been absent from the court room.
Q. Did you ever see him after that date?
A. Yes.
Q. How often have you seen him since that?
A. Very often because he lives in the same barrio where I live.
Q. Did he work with you in these mines?
A. No.
Q. You say you never heard any of the Iggorrotes making any protest about these mines?
A. No.
Q. As a matter of fact do you not know that they protested to Mr. Whitmarsh?
A. I do not know.
Q. Do you know whether or not they protested to Governor Pack?
A. I know in this way. I have heard such talk as that around in the district, but Governor Pack never told me about any such protest and neither did the Iggorrotes.
Q. Was it not the general talk amongst the miners that the Iggorrotes had protested to Governor Whitmarsh?
A. No, I never heard of it.
Q. When was it that you turned this book over to Governor Pack (Exhibit "L").

A. I cannot remember the exact date.

178 Q. Was it before the passing of the Act of Congress of July 1902?

A. Yes.

Q. How long before?

A. I cannot say.

Q. What was your reason for turning it over to Governor Pack?

A. At his request.

Q. Did he require you to turn it over to him?

A. Well, I do not know he asked me to turn it over to him and I suppose I had to do it.

Q. What did he say was the reason for turning it over to him?

A. He said he was recorder for the province here and was the one who had to look after the records of the province and record of the district.

FRED STEUBER, a witness for the defendant, after being duly called and sworn testifies as follows:

Direct examination.

By Mr. HAUSSERMANN:

Q. State your age and occupation and residence?

A. I am 37 years of age, a blacksmith and I live at Twin Peaks Province of Benguet.

Q. Did you ever live in Benguet Province?

A. Yes I live in the province at the present time and the first time I came to the province was in 1899, in November.

Q. What did you come here for?

A. I came after some insurrectos.

Q. Was you a soldier that time?

A. I was a Scout.

Q. When were you discharged?

A. I was discharged on the 11th day of December 1899.

179 Q. Did you come around up in the neighborhood of Baguio after that?

A. No, I went up to Suyoc.

Q. Have you ever been down to the Antamoc District?

A. I came there in October 1901.

Q. What did you do there in 1901?

A. I was working for Reavis in the mines at the gold mines.

Q. Where was Reavis mining at that time?

A. Antamoc.

Q. With reference to the mines he was working at that time?

A. On the claims.

Q. How long did you work for him?

A. About three months, from the 17th day of November 1901 until the latter part of February 1902.

Q. Were there any other persons working for him while you were working for him?

A. Yes, Iggorrotes.

Q. How many?

A. Two in the place where we worked, and two above and at the time he had more working.

Q. The work that you were doing and the work that they, the Iggorrotes were doing, was development work?

A. Yes.

Q. Do you know the claims he is now claiming?

A. Yes.

Q. Is that the same ground that you were working in 1901?

A. Yes.

Q. During the time that you were working for Mr. Reavis did any one object to his working those claims?

A. No, not to my knowledge.

180 Q. During that time did you hear any Iggorrote claiming any part of those claims?

A. No, I did not.

Q. Do you know anything about what was alleged to be Hollman's claims there?

A. From what I understood from the Iggorrote there, he said that Reavis was foolish to work those mines as they belonged to Holman. I did not know Holman at the time, and I did not hear them say that they belonged to any Iggorrotes.

Cross-examination.

By Mr. Moir:

Q. Did you hear of any protests having been made to Governor Whitmarsh in regard to the Americans having taken mines away from them there?

A. No.

Q. Did you hear of any protests in regard to any mining claims in Antamoc?

A. No.

Q. Do you know whether the Iggorrotes had any claims there at that time?

A. No.

Q. Did you see any claims there except the ones that had been worked by Reavis?

A. Well, there were some small holes all over the country, what time I saw men working there.

Q. Did you see men working close to where you were working?

A. No.

Q. How far off were those that you saw?

A. I seen two men working once way up on top of the hill in a little tunnel. And I was prospecting for another location for a tunnel and he was up on top of the hills.

181 Q. Did you speak to these Iggorrotes?

A. Yes.

Q. Where was that slide?

A. There was a trial coming from Baguio; a house is right on the trial and back of the house there is a little creek which is

marked on the plan Exhibit "B" and the slide commences east side of the house and runs away back from the house.

Q. And it was in this slide that you saw the men working?

A. Yes, on top of the slide.

Recall Mr. CLYDE.

Redirect examination.

By Mr. HAUSSERMANN:

Q. State whether or not you assisted Reavis in staking out his claims in March 1901?

A. Yes, I went with him and helped him.

Q. Was this staked out during the day time?

A. We started staking off about three o'clock in the after-noon and we continued until the next day.

Q. Did any one make any objections to the staking of said claims?

A. No.

Q. Were any persons about there and saw you staking it off?

A. Yes.

Q. Who were they?

A. Iggorrotes.

Q. What were they doing, if anything?

A. They were living there not doing anything.

Q. State as near as you can when these claims were staked out.

A. In the first part of March 1901.

182 Q. Were they the same claims recorded in the book marked Exhibit "L?"

A. Yes.

Cross-examination.

By Mr. MOIR:

Q. Did you see José Fianza there when you staked these claims?

A. No.

NELS PETTERSON, a witness for the defendant after being duly sworn testifies as follows:

Questions by Mr. HAUSSERMANN, on direct examination:

Q. State your age, residence and occupation?

A. I am thirty-two years of age, I reside in Benguet Province, and I am a miner.

Q. Are you acquainted with the district known as Antamoc mining district?

A. Yes.

Q. When did you go there?

A. In the year 1901, in February.

Q. Was Mr. Reavis there when you went there?

A. No.

Q. What were you doing there?

A. Prospecting, locating claims.

Q. What part of Antamoc were you prospecting?
A. North east of the Antamoc river, when the district was formed we called it Clay river.
183 Q. Did you prospect generally there?
A. Yes, in the time I was there I did.
Q. While you were prospecting there was any mention made of any property interests there?
A. Yes, I understood that Holman had some property interests there.
Q. How did you learn that?
A. From Mr. Iams.
Q. Did you learn it from any one else?
A. No.
Q. Do you know the property which was pointed out to you as the property of Holman?
A. Yes, Iams pointed it out to me.
Q. What was it?
A. I understood it was the property of the two pertinencias.
Q. Do you now whether Reavis has any mining claims at the present time?
A. Yes.
Q. State whether the property is which was pointed out to you as Hollman's property with reference to the claims owned by Mr. Reavis?
A. It covers practically the same property.
Q. How much is a pertinencia?
A. I understood it was 985 feet.
Q. Do you know if Mr. Reavis ever located any claims in the Holman property in 1901?
A. Yes.
Q. How do you know it?
A. From what he told me, himself, ersonally and on the stakes I saw his name.
184 Q. Do you know where Mr. Reavis lives?
A. Yes.
Q. Does he live on any part of the claims he staked out in the early part of 1901?
A. Yes.
Q. Has he lived there ever since?
A. I suppose he has, I have been away.
Q. Did you ever hear of any one objecting to him occupying these claims?
A. I heard that there was some litigation over it, that's all.
Q. I mean immediately after he occupied it in 1901?
A. No.

H. P. WHITMARSH, witness for the defendant, after being duly sworn, testifies as follows:

Direct Examination.

By Mr. HAUSSERMANN:

Q. State your age, occupation and residence?

A. I live in Baguio, I am a business man, and I am fourty years of age.

Q. What official position if any did you ever occupy in the province of Benguet?

A. First Governor under American occupation. From November I think the 29th, until October of the following year, it was about one year in all.

Q. Were you in Benguet province before you were appointed Governor?

A. Yes, nearly a year before.

Q. State as near as you can when you first came to Baguio?

A. It was the latter part of December 1899, or the beginning of January 1900.

185 Q. Were there any troops here at that time?

A. The American troops came here after I came here.

Q. Do you know the district known as the Antamoc mining district?

A. Yes.

Q. Did you ever go there?

A. Yes the first trip I made up to Trinidad I went over to Antamoc. I went there to get information about the mines and the country. I was a newspaper reporter then.

Q. Do you know the plaintiff José Fianza?

A. Yes.

Q. State whether or not you saw him when you first came to this province?

A. I stayed with him in Antamoc when I first went there.

Q. What position did he occupy at that time?

A. I understood he was presidente. There was not any American form of Government up here yet. They called him presidente.

Q. Did you have any talk with him in reference to mines in Antamoc?

A. All about the mines in the vicinity. He advised me to go over to Antamoc to look at them.

Q. What did he say in reference to the Antamoc mines?

A. He said that Holman owned the place where they were.

Q. Do you mean to state in Antamoc or in Itogon?

A. I mean Itogon.

Q. Did Fianza at that time tell you that he owned any part of that mine?

A. No, not to me.

Q. Did you go to him for the purpose of obtaining information in regard to these mines?

A. I asked him about them the time I came back to Ito-
186 gon, I went there first, and then came back and stayed with Fianza, and then he told me Holman had denounced some claims there. No, I did not go there to get information from him.

Q. Then you was with Fianza two nights?

A. Yes.

Q. Was it at his suggestion that you went over there to the Antamoc mines?

A. Yes.

Q. What did you then do, did you return?

A. I went back to Trinidad.

Q. Did you stay here then or did you go back?

A. I remained in this province and in Lepanto-Bontoc for about three months. I went out sometimes with the soldiers, and sometimes alone. I went from here to the edge of Lepanto-Bontoc with a party of miners.

Q. Did you hear ony other person say that Mr. Hollman had some mining property there or had denounced some claims?

A. His father wrote me about it and some Iggorrotes who I met in Antamoc pointed at the hill of Antamoc as belonging to Holman and Holman told me so himself.

Q. Did they point out that hill on your first trip there?

A. Yes.

Q. Do you know the defendant Reavis?

A. Yes.

Q. Do you remember when he first came to Bagnio?

A. Yes, I think it was in the fall of 1900.

Q. Have you any personal knowledge of his locating any mines at Antamoc?

A. Yes.

187 Q. Do you know when they were located?

A. I know.

Q. When?

A. I think about the beginning of 1901.

Q. How do you know that he staked out some claims there in 1901?

A. Reavis showed me his stakes there once or twice, and then he came in and spoke about it and other people told me he had located, and also some records were brought in the office while I was Governor. I think that they were brought in by Clyde.

Q. Can you state when it was you were shown those stakes by Reavis, as near as you can?

A. I cannot remember.

Q. When did you first learn of Fianza making claims to mines in Antamoc?

A. When he came to the Tribunal and spoke of it.

Q. When was that?

A. As I remember it was somewhere about June or July 1901, I should say. While I was Governor.

Q. After you had seen the stakes pointed out to you by Mr. Reavis as his claim?

A. Yes.

Q. You were made Governor when?
A. I do not remember when, I have forgotten, I have a document containing my appointment down at the house.
Q. It was after you were appointed Governor?
A. Yes.
Q. And it was after you saw the stakes put up there by Mr. Reavis?
A. Yes.
188 Q. Were you Governor at the time that you saw these stakes, that Mr. Reavis pointed out to you?
A. Yes.
Q. That was before you had the conversation with Fianza in reference to him claiming that property?
A. Yes.
Q. From the time that the stakes were pointed out to you by Reavis until Mr. Fianza claimed any mining property down there had any one made any claim to you or otherwise with reference to some one usurping or taking any claim?
A. No.
Q. Have you bought gold while you were in this province?
A. I bought about forty odd ounces from Fianza the first time I went down there.
Q. Did you buy any gold since then?
A. No.
Q. Do you know whether or not Mr. Reavis was working these claims that he pointed out to you?
A. Yes.
Q. Were any one working there since you saw them?
A. Yes, I have seen people working down there and employed by Reavis.

Cross-examination.

By Mr. MOIR:

Q. Who went with you the first time you went down there to Fianza's house and the mines?
A. José Garcia and Ilocano.
Q. Who was he?
A. Guide and interpreter.
Q. Did he speak English?
A. No, Spanish.
189 Q. Did you at that time speak Spanish very well?
A. Fairly well.
Q. Where does he live now?
A. In Trinidad, son of Vicente Garcia.
Q. Do you understand the Iggorrote language?
A. No.
Q. Did you yourself have any conversation with Fianza except thro' an interpreter.
A. No.

Q. Please state to the court all of the conversation in regard to Fianza when he complained before you at the Tribunal?

A. As I remember he came and said some American had taken up property which he claimed and he wanted me to throw the American off. I told him as far as I knew there was no law under which he could do any thing at that time and I advised him to put the matter off until something more definite was provided. At that time I was the Governor under the Civil Government, and very little was done under the laws.

Q. How many times did he come to you to make complaint?

A. One. That is all that I remember.

Q. When you were at Fianza's house did he tell you that he did not have any claims at Antamoc?

A. No, he did not say he had no claims.

Q. Did he go up there with you?

A. No.

Q. This conversation you had with Fianza about what date?

A. I think it was in January, I do not know the year, it was the first year that I came here.

Q. Did you have any interest in any mines at Antamoc at that time?

A. No.

190 Q. Have you had any since?

A. No. I have had some claims there I staked out last year but I have abandoned since.

Q. The conversation which you had in the Tribunal with Fianza in June or July 1901, the best you can fix the date, did he say where the property was?

A. He said Antamoc, by which I understood he meant the hill there, where there had been lots of working.

Q. Did you understand from the language by the interpretation that it was the mines of Antamoc?

A. Yes.

The Court here takes a recess until two o'clock in the afternoon.

Afternoon Session.

The deposition of J. E. Kelly is presented by the defendant and offered in evidence.

The same is admitted by the Court and will be attached to the record.

JOHN F. REAVIS, defendant, recalled in continuation of his testimony in chief.

Direct Examination.

By Mr. HAUSSERMAN:

Q. Referring to the Otee claim, which was recorded by you in October 10th 1902 at 10 a. m., how long had you been in possession of that mining claim prior to the location as referred to in said location notice filed on said date?

A. Thirty days, I believe.

Q. Not in possession of it longer than that?

A. Yes, I do not remember the exact date.

191 Q. What property did you locate in 1901?

A. Texas and Otec.

Q. How long were you in possession?

A. Over a year from February 1901 until it was located or recorded.

Q. Give the dimensions of the Otec claim?

A. Well it is marked there.

Q. What is its width?

A. I take it to be about 700 feet at one end and probably 900 feet at the other. 100 feet lies northeast of the line from post No. 1 to post No. 2, and 900 feet to the south of line from post No. 1 and 2.

Q. Referring to the claim known as the Texas and location notice, which was filed by you October 10th 1902 at nine forty five A. M. in the office of the Provincial Secretary state what length of time prior to the recording of it were you in possession of the claim known as the Texas?

A. From March 1901 to the present time.

Q. Referring to the claim known as the Clayton, location notice of which was recorded October 10th 1902, at 10/20 A. M. for what length of time were you in possession of the ground within that claim?

A. From March 1901 to the present time.

Q. State what you did when you entered into possession of that land in March 1901?

A. I went on the land and found mineral in place and some Iggorrotes carried some posts and I got Mr. Clyde to help me and put up posts on it. I wrote out the necessary location papers and took them down to the recorder at the proper time and had them recorded.

192 Q. In accordance with what law, if any, did you locate that land in March 1901?

A. Trying to comply with the American mining law.

Q. What do you mean?

A. I mean the United States' mining laws.

Q. Do you know what the custom was among the American miners in reference to the mode of locating claims at that time in this Province?

A. Yes.

Q. What was the custom?

A. To put up stakes, write notices on the location and record them at the office.

Q. Was it the custom to follow any law at the time?

A. Yes, the United States' mining laws.

Q. Did you locate yours according to that custom?

A. Yes.

Q. Did you prepare location notices?

A. Yes.

Q. What if any did you do with that location notice?

A. I brought it in here and turned it over to Governor Whitmarsh, who was receiving them at that time.

Q. State whether or not you give them to the deputy recorder of that district?

A. Yes, I gave them to the recorder to be placed on record at the miner's house of Clyde as recorder.

Q. Were they so recorded?

A. Yes.

Q. What if anything has been done upon the claims located by you in March 1901 in the way of development?

193 A. I have done 600 or 700 feet of work in tunnels, shafts, assessment work on all the claims.

Q. How much assessment work have you done upon each claim since March 1901 and July 1902?

A. I done six feet on each claim the first work I did and afterwards in prospecting done more work. And when the time came for assessment, I did the work for the assessment account, the assessment work as each year is required to be done by the owner of the location, as required by the only assessment work law of the United States.

Q. Did any one object to you developing the land at that time?

A. They did not.

Q. Did you obtain help from the Iggorrotes in that vicinity?

A. I did.

Q. Have you been in the quiet and peaceful possession of these claims and each of them since that time?

A. Since that time until some time in March 1902, when I had a notice served on me to come and see the Governor.

Q. Have you been in possession since then?

A. Yes.

Q. Was possession taken away from you by Governor Pack?

A. No.

Q. What caused you to file location notice in October 1902?

A. The laws I believe of the Philippine Islands. I did it to comply with the laws.

Q. Are the location notices of the claims Otec, Texas and Clayton, were they filed for the purpose af complying with the Act of Congress of July 1, 1902?

A. Yes.

194 Q. Since that Act have you filed your statement as to the amount of work performed by you as required by law?

A. Yes.

Q. With whom did you file it?

A. With the Governor of the Province.

Q. Where did you file it with the Governor or the Provincial Secretary?

A. In the Governor's house I guess it was the Provincial Secretary.

Q. In your best judgment, this land which you entered on March 1902, state whether or not that was mineral land?

A. Yes, it was.

Q. How many different veins or lodes are these claims located on?

A. They have several, I could not say how many.

Q. Any two of the claims on the same vein or lode?

A. No, not to my knowledge.

Q. What, if anything, did you do before staking out the claims in March 1901, to ascertain whether or not these mines were occupied or whether there were any claims on that land?

A. I prospected and looked for signs and posts and inquired of people if any one claimed to be the owner over them.

Q. What people did you inquire of?

A. From the miners who were there, and when I got to the creek I did not know how far they went.

Q. Did you make any inquiries from the Iggorrotes?

A. No, they told me voluntary that the mountain in the bend of the river was the property of Mr. Holman.

195 Q. Now Mr. Reavis can you tell intelligently what information you got from the Iggorrotes there, if any? (You may use this document, marked for identification "A").

A. I got from them that this part of the country lying in the bend of the river and which formed a part of the mountain lying to the northeast belong- to Holman.

Q. What examination did you make of that ground before locating before making any locations?

A. I went over the ground and looked over the ground and prospected it.

Q. State what you found on that ground which the Iggorrotes claimed to you was Holman's?

A. I found Iggorrote tunnels.

Q. How many?

A. Lots of them.

Q. Anything else?

A. Yes, a few Iggorrotes.

Q. Where?

A. On top of the slope.

Q. Did you find any other indications of this ground having been posted or claimed by any one in that examination?

A. No.

Q. Did you at any subsequent time find such indications or marks?

A. No.

Q. Did you at any time find any boundry lines, stakes or corners indicating that the grounds had been staked by any one?

A. I did.

196 Q. Where did you find it and where?

A. I found one small post with H. Holman in blue pencil on the west side of the big slide.

Q. Describe that post as to size and dimensions?

A. About three inches in diameter and a round post.

Q. Where was his name written?

A. On the edge of the post.

Q. What mark of blazings did you find upon that post?

A. It was a little scalped, made by a bolo, and the name was written therein.

Q. Was there not some dates on that post there?

A. Yes there was "Registered 1896".

Q. Now were there any other marks along the river of any kind?

A. On the bank of the river south or south west was a stake with a buffalo head on it, indicating the mark "A" on the diagram, and in a southerly direction from there some 3000 feet or less is a tree with some rocks round it (indicating the letter "B" on diagram "A") The Iggorrotes told me they were Holman's lines and marks.

Q. You have pointed three marks out, did you find any other?

A. That is all I ever saw.

Q. What is the distance between "A" and "B"?

A. About 3000 feet approximately.

Q. Certainly more than 2500?

A. I think so.

Q. Now state Mr. Reavis, after receiving information of that kind from the Iggorrotes, what if anything did you do to see Mr. Holman?

A. I came over to Mr. Holman's place near Baguio and found Mr. Holman and asked him how much, how many pertinencias, or how much land he claimed in Antamoc and he told me in so
197 many metres, I did not understand the size of. I asked him if he would go with me and show me where his lines were and he said it was not necessary, that all the Iggorrotes knew where his lines were.

Q. That is all that was done?

A. That is all.

Q. Did you make any other investigation as to whether or not he had perfected or abandoned his claim?

A. I do not think so.

Q. Was this conversation before you staked it out in 1901?

A. Yes.

Q. Do you know how long before?

A. A very few days.

Q. Hand witness paper marked for identification "A", and invite your attention to 14 circles and 14 dots therein on said diagram and state what they represent?

A. They represent stakes set in the ground by some one after the injunction was served on me in this case.

Q. Do you know who put them there?

A. Fianza told me that he put them there.

Q. This was after the injunction was served upon you?

A. Yes.

Q. Was there any survey made of that land? if so when?

A. A short time after the post was there Fianza came over with a Filipino surveyor and had him to go round these posts. It is the same surveyor who came down on the stand here and testified and the same one who made the plat on the paper.

Q. Did you hear the testimony of Mr. Wagner relating to some stakes set up by them on the 6th day of May 1902?

A. Yes, I saw them.

198 Q. When?

A. On the day that Mr. Wagner and myself went over the ground.

Q. Are these stakes marked on the map?

A. These are my indications of the position of these stakes.

Q. Why did you say these stakes were placed there after the injunction was served?

A. Because I was over there when the Iggorrotes placed them up.

Q. Did you see the stakes that Mr. Wagner placed there on May 6th?

A. Yes, on the day that we went over there with Mr. Lawrence about three days ago.

Q. Who was with you?

A. Mr. Lawrence, Mr. Wagner and Fianza.

Q. Were these the stakes referred to by witness as the 14 stakes pointed out to you by Wagner, Lawrence and Fianza. Were these stakes there before the injunction was filed?

A. Not that I saw.

Q. Were you around that land so as to see them if they had been there?

A. Yes.

Q. So when Wagner placed these posts there in 1902, did you see them to three days ago when they went out there?

A. They were not there.

Q. Did you see any of the stakes that Mr. Wagner testified as having been placed there by him on May 9th 1902.

A. Yes, when we went over there I saw them about three days ago when we went over there.

199 Q. How many did he show you that he had placed there?

A. He showed me one that he was positive of having placed there.

Q. That post that Mr. Wagner during the progress of this trial that post he said he set there in May 1902, prior to this trial?

A. I had seen it probably a month before that. That was the first time it was pointed out to me as being the post he had placed there.

Q. When you re-located that land in order to comply with the Act of July 1902, did you place new posts or stakes around there?

A. Yes.

Q. In relocating and placing the stakes to comply with the Act of July 1, 1902, state whether or not you saw any posts other than the ones you had placed there in March 1901, and the posts referred to you in your examination of Holman's post "Registered 1896, H. Holman" on it?

A. The ground was just the same as when I first located it.

Q. About how many Iggorrotes in the aggregate have you employed in various times on that property since March 1901?

A. I have employed at various times as many as 100 or 150 Iggorrotes and sometimes I would have a few working and sometimes as many as 20 or 25.

Q. During that time did these employés or any other person that was working for you intimate in any way that Fianza had claims to the ones being worked by you?

A. They never did.

200 Q. Did any of that ground have any improvements thereon when you located in March 1901?

A. It had nothing but Iggorrete tunnels.

Q. Any material of any kind?

A. No.

Q. State whether or not, there were Iggorrote tunnels, as mentioned by you, in any other part of the location than the lands located on by you?

A. Yes, there is Iggorrote tunnels all over that mountain and other mountains.

Q. Antamoc mountain?

A. Yes.

Q. Are there tunnels in the vicinity and adjacent to the mines?

A. Yes.

Q. State whether or not there are any tunnels, such as you call Iggorrote tunnels, outside the lines of the 14 posts referred to as having been placed there by Fianza, since the commencement of this suit?

A. Yes, plenty of them.

Q. State whether or not, Mr. Fianza at any time prior to the investigation made by Governor Pack, at any time had any conversation with you in reference to mining property?

A. He never did.

Q. Did any one for him?

A. No, but I heard before this that Fianza claimed Antamoc.

Q. When did you first hear that?

A. From Governor Whitmarsh.

Q. When?

A. Sometime in 1901, after I had located thereon in March 1901.

Q. Do you remember the conversation that Fianza testified to, as having been with you and he?

201 A. No, I did not have any such conversation.

Q. State whether or not, at that time or at any other time, he claimed any interest in the claim located by you in March 1901?

A. Only what Whitmarsh told me, and the news went round amongst the prospectors. Fianza personally never held any conversation with me in any manner. If he did it was in a language I did not know any thing about; I did not know what it was he was talking about, and I never talked to Fianza to any great extent. I have talked with him a very little at times.

Q. Did you talk any thing about mines?

A. No, never did.

Q. Who made this map, Mr. Reavis, Exhibit "J"?

A. I did.

Q. State whether or not that map represents clearly the location and station around Antamoc?

A. Yes, as good as I could do it.

Q. Are all the notes and information placed there and noted by your own handwriting, "A" "B" "X" "Y" "U" and "Z," which have been placed there during the progress of this trial?

A. Yes, I did.

Q. Was the map made to a scale?

A. No.

Q. Are the various matters represented, which are placed thereon, according to your best judgment?

A. Yes.

Q. And is it all made from your own personal knowledge and observation?

A. Yes, I made it alone and by myself.

202 Q. There is a quadrilateral on that map marked "H.H. P." and a note as Holman's pertinencia, was that made from your recollection or estimate?

A. Estimated from the place where the post when found that the Iggorrote showed me. (The witness pointing to the southwest of the quadrilateral referred to in the question.)

Q. Now are there any other things put there from calculation and not from personal observation?

A. The 14 posts are put there from observation, it is all from observation.

Q. Now what is the length of that quadrilateral and how wide is it?

A. I have put down there the measurement, but I do not know the exact size of these claims here. They are supposed to measure 1000 by 600 feet.

Q. Do you know the shape and form of a Spanish pertinencia?

A. I know it was less than a 1000 feet by 600 feet, I do not know the size of one.

Q. Do I understand you to mean you assumed he had a pertinencia there and you tried to locate it there with your stakes?

A. Yes.

Exhibit "A," defendant's, is here presented and *and* admitted in evidence.

Cross-examination.

By Mr. Moir:

Q. Did you find any other stakes besides that quadrilateral marked H. H. P.?

A. I did not.

Q. What was your reason then for extending it east instead of west?

203 A. Because it was the one the Iggorrote showed me the way it ran which was east at the post at the south west corner and pointed east to the other post where he said it was and also north to where he said another one was.

Q. Is this heavy red line running round your Otee claim marked Clayton River, is that the one there at Antamoc?

A. Yes.

Q. Is there any other river there?

A. No.

Q. Then the point "A" where you found the post marked Holman's post, is on the other side of the river from your claims?

A. Yes.

Q. How far from the other side of the river?

A. I would estimate it to be some five hundred or four hundred feet.

Q. Is that the post you found written in blue pencil "H. Holman, Registered 1895?

A. No, it is not.

Q. Which post was that that you found the writing on?

A. The post the Iggorrote took me to here (Indicating the south east corner of the quadrilateral marked H. H. P.)

Q. When was that that you found one post with that writing on it?

A. The day the Iggorrote showed me, I think in the last days of February 1901.

Q. When did you first come to Benguet Province?

A. I came to Baguio in October 1900.

Q. How long did you prospect at Antamoc before you discovered a mine?

A. About half an hour or an hour I discovered that it was a mineral country.

204 Q. Did you then discover mineral in place?

A. Yes.

Q. You testified that the Iggorrote told you that the post A. B. represented Holman's line, what time was it that he pointed it out to you?

A. The first day that I located my claims, the first day I went into Antamoc. It was in February 1901.

Q. Did you see Iggorrotes putting those 14 posts there as testified to by Fianza, all fourteen of those posts?

A. No.

Q. What material have you on these mines now?

A. I have none except picks and shovels and a little mortar, and a gold pan.

Q. How long since you learned to talk the Iggorrote language?

A. I have not learned yet.

Q. Can Fianza talk English or Spanish?

A. I believe that he knows some words in Spanish. I have never talked enough with Fianza to know what he talks.

Q. What language did you talk to him in when you talked to him at all?

A. When I talked with him just with myself and him we jabbered a word of Iggorrote, and a word of Spanish and probably a word of English.

Q. Then if you cannot understand him you do not know whether he ever protested to you about the Iggorrote mines which you claim?

A. I think he did yes.

Q. If you do not know his language and he does not know yours how then could you understand him?

A. I believe that a man can understand a word or two, it
205 seem to me if he had something to explain to me that he could explain it by saying "Vamoose," or something like that and I could understand it.

Q. One of the witnesses marked your tunnels and workings on these claims by the letter- "Y," "X," please state if these positions are approximately correct?

A. "X" is approximately correct for one of my tunnels. "Y" is also approximately correct. But this is not all the work that I have done on the claims.

By the COURT:

Q. Mr. Reavis the witness Hans Holman testified, as you heard him, to the mining claim consisting of 120,000 square metres, assuming that this represents a tract of ground 984 feet wide and 1312 feet long, explain to me how the marks indicated by you on Exhibit "A" as "A. B." on the quadrilateral H. H. P. can be at one and the same time boundary lines or marks of the Holman pertinencia?

A. I never claimed that they were marks of the Holman pertinencia. They were marks of the whole entire country on the east side of the river.

Q. Then you have never insisted and do not insist now that the two land marks, one consisting of a buffalo head and the other with a tree with stones piled around it, had anything to do with the claims that you know anything about?

A. No.

Q. Considering the claim of Holman the size of two Spanish pertinencias after this testimony of Hans Holman, or 120,000 square metres; and figures of that location, would be a tract of land with square corners 984 feet wide and 1312 feet long, assuming that the fact, have you clearly represented in the quadrilateral H. H. P. the relative size of Holman's claims to the three claims drawn on the map representing your claims or is it too large or too small?

206 A. It is too small as explained by you.

Q. How much too small?

A. Half too small it is as large again.

By Mr. HAUSSERMAN:

Q. In answer to the questions of the court you stated to him that the marks A. and B. you knew nothing about, now explain to the court what you mean by that?

A. I mean as I understood the court, that I did not recognize them as any marks of mining claims, in my judgment, the Iggorrotes pointed them out to me as Holman's marks.

Q. What does this drawing represent and why was H. H. P. drawn there?

A. It represents my idea from the stake the Iggorrote showed me. It is my assumption that the pertinencia lay from one stake to the other where I first learned that Mr. Holman claimed that pertinencia.

Q. State to the court what dimensions has the lines marked as your claims, what dimensions they represent?

A. 1000 feet each one, each claim. 1000 feet square. Made from the width of my spectacle case, all I had to make it with.

Q. And to your best judgment you have drawn the rest of this map from the spectacle case?

A. Yes.

Q. You traced the dimensions and made the location on the basis that your spectacle case represented 1000 feet?

A. Yes.

Mr. HAUSSERMAN: I desire to introduce in evidence pages 16-17 and 19 of book of Provincial Secretary's office, known as records of affidavits, and the book is marked "A" which contains the affidavit of the defendant Reavis of the annual assessment work made upon the claims Clayton, Otec, and Texas for the year 1903.

207 The books are admitted under condition that party offering same supply a copy. Marked Exhibit "M" consisting of three sheets of affidavits.

Asks reservation to file the affidavit which is required by the Act of Congress of July 1st 1902.

The instrument headed "Notice of Location" identified by the witness J. O. Wagner, is now, by consent of both parties and in the presence of the Court, marked for identification Exhibit "O." The same will be admitted (By the Court).

Court adjourns until Monday morning at nine o'clock.

208 SATURDAY, *May* 21, 1904.

Mr. REAVIS, recalled by the defendant.

Direct examination.

By Mr. HAUSSERMAN:

Q. Calling your attention to that part of the testimony of Fianza in which he states that a certain camarine was on the claim claimed by you, state whether or not there was any camarine on either of the claims owned by you?

A. There is now.

Q. When was that camarine placed there?

A. It was placed there last October or November.

Q. By whom?

A. By Fianza.

Q. Referring to the sign-board introduced in evidence by the plaintiff, state whether or not that sign-board was ever on any one of the claims located by you?

A. Yes, sir.

Q. On what claim?

A. It was in the camarine.

Q. On what claim?

A. On the Texas or Otec I could not say which.

Q. When was it placed there?

A. It was placed there at the time the camarine was built, or immediately afterwards.

Q. In 1902?

A. In 1902.

209 Q. I thought you said just a minute ago last year?

A. Yes, sir. In 1903 it was finished.

Q. What did you do when you saw the sign-board?

A. I took it down and broke it in four pieces and put it in a little basket that was there so that the Iggorrote could know that I had been there.

Q. State whether or not Fianza or any person for him obtained any gold off the claims during 1903?

A. No, not that I know of.

Q. How much work did you do annually on each of the claims located by you in March, 1901?

A. I have done over one hundred dollars worth of work annually.

Q. Of what did said work consist?

A. Tunnels,——

The COURT:

Q. Now, Mr. Reavis, without further questions, describe the tunnels and workings on each one of the three claims, the facing for the preparation for the tunnel, the size of the tunnel, its extent and the character of material through which the tunnel was driven, taking each one by itself.

The WITNESS:

A. On the Otee, near the river, I done one hole, forty feet of tunnel, through quartz and clay, crushed, a tunnel, 6 feet by 4, forty feet long.

The COURT:

Q. State whether or not it was necessary to timber it or not.

The WITNESS:

A. I did not think it was at the time. It has caved in since.

210 The COURT: Proceed.

The WITNESS:

A. And four other tunnels on the same ground of smaller length, some 10 feet, some 12 to 30 feet. On the Texas I done one hole about 50 feet in a hard formation, very hard, using powder all the time, of the same dimensions. These tunnels are not of as big size as I laid them off on account of them having been done by Iggorrotes, most of the work, and they did not make them full size, and I could not get them to do it. Another tunnel on the Texas 30 feet, in a similar material, done with powder, and on the Clayton 160 feet of work in one hole, 40 feet of which is cross-cutting.

The COURT: You use the word "cross-cutting," by which I know that that was probably a tunnel. It might have been a shaft?

The WITNESS:

A. A tunnel. And small holes also on the Clayton; also on each of these other claims 10 feet, 12 feet or so in.

The COURT:

Q. Let the counsel proceed with the examination of the witness.

Mr. HAUSSERMAN:

Q. State whether or not the land entered upon by you in March, 1901, and staked out in accordance with the mining laws of the United States was public mineral land?

A. Yes, sir. In my judgment.

Q. Was it occupied or unoccupied at that time?

A. Unoccupied.

211 Q. State whether or not you discover gold on each of these claims?

A. I did.

The COURT:

Q. Was it in place?

The WITNESS:

A. It was.

Mr. HAUSSERMAN:

Q. For what purpose were these claims staked by you?

A. For the purpose of developing and eventually obtaining patent.

Q. From the Government?

A. From the Government.

Q. That is all.

Cross-examination.

By Mr. MOIR:

Q. Whose warehouse is that you spoke of, Mr. Reavis?

The COURT: Camarine:

Q. Camarine?

A. I do not really know whose it was. No one claims it, I believe.

Q. How long were they in building that camarine?

A. I don't know.

Q. Weren't you there?

A. No, sir, I was not. I was in Suyoc part of the time and part of the time at my house in Nagdan. I lived in Nagdan here almost a year making trips from Antamoc here and from there here.

212 Q. Didn't you see that sign-board on any of your trips to Antamoc?

A. Until I moved into it I never had seen it.

Q. Moved into it, you say?

A. Yes, sir.

Q. Did you move into it when you broke the sign-board down?
A. Yes, sir.
Q. You say you moved into it when you broke that sign down?
A. No, I take that back. I didn't. I took the sign down after I moved into it.
Q. What did you find written on that sign?

The COURT: The sign is in evidence?
Mr. MOIR: Yes, sir.

A. I saw the same written on it as is written on it now, as I saw it here.
Q. What was your reason for going into that house and taking that sign down, Mr. Reavis?
A. Because it was on my property and I had been trying to bring this thing to an issue for so long, and taking every step that I could to bring this litigation to a close, and I wanted to leave evidence that I had been there and didn't see anybody that I could talk to and I wanted to leave evidence that I had been there.
Q. Was that an old house or a new house—moved up?
A. It was an old house and was moved up about 200 feet.

213 Mr. HAUSSERMAN: 200 feet or 200 yards?
The WITNESS: I should think about 200 yards, to the claim. It may be shorter; I don't know the distance.

Mr. MOIR:

Q. On what claim was it originally?
A. I think on the Otec.
Q. Where is it now?
A. It is now, I believe, would be on the Texas. The mines, I don't know whether they have ever been surveyed only by my own work.
Q. How much were you on your claim in 1903, Mr. Reavis?
A. 1903 I was there every month, every week sometimes, as the case might be. Sometimes possibly longer.
Q. Did you find any holes in the ground when you say you discovered that gold, Mr. Reavis?
A. Yes, sir.
Q. Was not that pretty good evidence, now, that the land was occupied, in the intention of the law?
A. No, sir. None whatever. I never dreamed of it in that light.
Q. You testified in your examination in chief that when you went there you were told that it was occupied by Mr. Holman?
A. Yes, sir.
Q. How much of that land did they say was occupied by him?
A. They? Who do you mean?
Q. Any body you heard speak of it.
A. The Americans told me that all on that side of the river was Mr. Holman's grant, as they understood it.

214 Q. Do you remember what date it was that Mr. Whitmarsh told you that complaint had been made to him about your taking these mines from Fianza?

A. No, sir, I do not.
Q. That is all.

Redirect examination.

By Mr. HAUSSERMAN:

Q. What did you mean by moving into that camarine?
A. When I went to do my assessment work I went over and found this house completed and I moved into it.
Q. Is that the house you are living in now?
A. No, sir; that is the house on the hill, beyond the one in which I am living now.
Q. Did you move into it just temporarily?
A. Yes, sir, while I done my assessment work.
Q. What induced you to locate upon land which had been pointed out to you as Holman's grant?
A. Because I had learned previously that there was no grants in this part of the country, and thinking that Mr. Holman hadn't complied with any of the laws and didn't intend to, I thought I would go into it and see what chance I had with it.
Q. That is all.

Mr. HAUSSERMAN: Just wait a minute while I have you identify these papers.
The COURT: Three documents produced by counsel for the defendant and collectively marked for identification "Defendant's Exhibit "P." Are those affidavits filed in the public office?
215 Mr. HAUSSERMAN: Yes, sir.
The COURT: Have they been recorded?
Mr. HAUSSERMAN: Yes, sir, I am just seeing whether the recording notice is on the envelope only or on the affidavit also.
The COURT: Let me see one of the envelopes.
Mr. HAUSSERMAN (handing paper to Court): It is on the envelope, I see.
The COURT: There is an unsigned memorandum on there that it is recorded. Do you admit the recording of these affidavits at the time stated on the affidavits?
Mr. MOIR: What is this? The affidavit of assessment work?
Mr. HAUSSERMAN: No, sir, that is the affidavit of the location work.
Mr. MOIR: That is all right. That they were recorded at the time shown here.
The COURT: October 10th.
The COURT: The defendant's counsel offers these original documents, Exhibits "P," in evidence, together with the fact that they were recorded in the office of the mining recorder of the Province of Benguet on the 10th day of October, 1902. Gentlemen, is that date correct?
Mr. HAUSSERMAN: Yes sir.
The COURT: 1902. And they are admitted.
Witness excused.
Defendant rests.

216 *Rebuttal.*

Acoup, a witness for the plaintiff, called and duly sworn, testified as follows:

Direct examination.

By the Court:

Q. What is your name?
A. Acoup.
—. Where do you live?
A. Capungan.
Q. Are you married or single?
A. Married.
Q. How old are you?
A. I do not know how old I am because I do not know how to read or write.
Q. What is your occupation?
A. Laborer and Coffee-planter.

The Court: Proceed Mr. Moir.

By Mr. Moir:

Q. Did you ever know a man by the name of Hans Holman?
A. Yes, sir.
Q. Hans Holman has testified before the Court that you signed a paper as a witness, which was also signed by José Fianza, stating that the Antamoc mine belonged to him, Hans Holman. Did you ever sign such a paper?
A. I do not remember of having signed any paper about mines.
Q. Do you know positively whether or not you ever did witness such a paper for Hans Holman?
A. No, I never signed it.
217 Q. Did you ever hear of any such paper?
A. No.
Q. That is all.

No cross-examination.
Witness excused.

José Fianza, recalled by the Plaintiff.

Direct examination.

By Mr. Moir:

Q. Do you remember when Mr. Whitmarsh first came to your house your place in Itogon?
A. Yes, sir, I remember.
Q. Do you know who came there with him to act as interpreter?
A. Yes, sir; I know Juan Valdez, he was his compañero.
Q. Do you know when that was, how long after the Americans got here?

A. The first time the Americans arrived here, and he was not yet Governor.

Q. Do you know José Garcia?

A. Yes, sir, I know him.

Q. Is he living?

A. Died.

Q. Are you certain José Garcia did not go to your house with Mr. Whitmarsh?

A. José Garcia came to my house, but alone; did not
218 come with Mr. Whitmarsh; and I know that Mr. Whitmarsh came with Juan Valdez.

Q. Do you remember any conversation you had with Mr. Whitmarsh through that interpreter in regard to the Antamoc mines?

A. I do not remember of having any conversation with Mr. Whitmarsh about the mines of Antamoc, and I only remember of having had conversation with him through the interpreter about the gold that he wanted to buy from me.

Q. Did you sell him any gold, and how much?

A. Yes. But I do not remember how much. I think about the weight of thirty or more pesos.

Q. Did Mr. Whitmarsh go up to the Antamoc mine from your house-

A. I, with Mr. Whitmarsh, came back to Trinidad through Loacan because Mr. Whitmarsh did not have the money with him to pay for the gold, and I came down to Trinidad the next morning with Mr. Whitmarsh and brought the gold to Trinidad to receive the money there.

Q. Did Mr. Whitmarsh spend the night at your house?

A. Yes, sir; he slept there one night and the next morning we came back to Trinidad.

Q. Did you tell Mr. Whitmarsh through that interpreter at that time that you did not own Antamoc mines?

A. No, I did not say to him anything about it because I only spoke with him about the gold.

Q. Did you at any time tell Mr. Whitmarsh that you did not own these mines and that Hans Holman owned these mines at Antamoc?

A. No, I did not say to him about that. Why did I say
219 to him these mines belonged to him?

Q. Hans Holman has testified before the Court that you signed a paper stating that those mines in Antamoc belonged to him, Hans Holman, and not to you. Did you ever sign such a paper?

A. It is true I signed a paper, but not about the Antamoc mines; and he said to me, because I did not understand what the papers contained, he said to me that the papers was about the Acupan mines, and not Antamoc mines; because if he should say that that paper about the Antamoc mines I would not sign it because the Antamoc belonged to me.

Q. What is your reason for signing a paper about the mines at Acupan? Did you own those mines?

A. It is true that I signed the paper because he compelled me to sign it, and he was mad.

Q. Do you know when this was?

A. I do not remember when, but I know that it took place in the old tribunal here.

Q. Well, was it in the time of the Spaniards, Katipunan, or when?

A. I think it was the last days of the Spanish sovereignty; the time of the Spanish domain. And after a while the Katipunan came here.

Q. Who else was present besides you and Hans Holman when that paper was signed?

A. So many men that are not here; but I think they did not see me sign the paper, but I do not know that, because Holman was holding the paper and said to me "Sign it! Sign it! sign it!", and he has the appearance of being mad, and we, the Iggorrotes,
220 and we always do what they tell us.

Q. Do you know how to read or write any language?

A. No, I only know how to sign my name.

Q. Did you ever make any contract or agreement with Holman to sell him all of the gold that came out of your mines?

A. No, I did not make any contract.

Q. How far is this Acupan mine from your mines?

A. From my mines to Acupan is about two hours, or three, because Acupan is in the jurisidiction of Batuan.

Q. Are you quite certain that your mining property is the same mining property that your father had.—the same boundaries?

Mr. HAUSSERMAN: Objected to. We have gone into that fully in the examination in chief.

Mr. MOIR: All right. Strike it out then.

Q. How far is it from your mines to the hole Mr. Reavis has made in his mines?

A. I think about the distance from this tribunal to the church.

Mr. MOIR: That is in the neighborhood of 250 yards. It has been agreed upon before.

Q. Are any of his excavations made in your mines?

Mr. HAUSSERMAN: Objected to for the same reason.
The COURT: Objection overruled.
Mr. HAUSSERMAN: Exception.
The COURT: Exception granted.

A. No.

No Cross-examination.
Witness excused.

221 JUAN CARIÑO, recalled by the plaintiff.

Direct examination.

By Mr. MOIR:

Q. Do you know Hans Holman?
A. I know him.
Q. He has testified here that you witnessed a paper signed by Fianza stating that the Antamoc mines belonged to Holman. Did you ever sign or see such a paper?
A. It is true that I signed a paper which paper was related to his mines of Kapungan.

The COURT: Now just tell him to tell us whether he ever signed any paper relating to the Antamoc mines.
The WITNESS: No, I did not sign any paper relating to the mines of Antamoc; only papers relating to Kapungan mines.

No Cross-examination.
Witness excused.

222 DUCAYOG, a witness called by the plaintiff, having been previously sworn, testified as follows:

Direct examination.

By Mr. MOIR:

Q. Where do you live?
The INTERPRETER: Residence Boa. Age unknown. Occupation planter and laborer.

The COURT: Let the record show that the witness is 21 years of age and upwards and a competent witness. Proceed.

Mr. MOIR:

Q. Do you know Fianza's mines in Antamoc?
A. Yes, sir.
Q. Do you know the mines of this gentleman here, Mr. Reavis?
A. Yes, sir.
Q. How far are his mines from Fianza's mines?
A. About the distance from the tribunal to the Chinaman's store.

Mr. HAUSSERMAN: About how much is that?
The COURT: About 300 yards. What is your judgment of it Reavis?
Mr. REAVIS: About 300 yards.
Mr. MOIR: That is all.
No Cross-examination.

223 Mr. MOIR: Just another question before the witness leaves the stand. Who had you brought here to court?
The WITNESS: Reavis.

Witness excused.

The COURT: Call the next witness.

Mr. MOIR: May it please the Court, the witness who went down with Mr. Whitmarsh as Interpreter is sick in Trinidad. We would like to take his deposition, showing that he went there and did not make any of the statements said to have been made by him. My client has sent down a chair to bring him back but he is too sick to come. However, I think we can take his deposition, and with the taking of that deposition we will rest our case.

Mr. HAUSSERMAN: In the event that deposition is taken, if your Honor please, I will ask that I be permitted to recall Mr. Whitmarsh, or take his evidence in some manner to controvert the testimony of such witness.

The COURT: You can take Mr. Whitmarsh's evidence by stipulation when he goes through Manila on his return, and let it be understood that when it is taken that Mr. Cohn or Mr. Hausserman will be present on the one side and one of the Attorneys for the plaintiff on the other, and when it is received I will cause it to be attached to the record the same as if it were taken in Court.

Gentlemen proceed with your argument.

224 (Whereupon, it appearing to the Court from the statements of counsel that by reason of the indisposition of the attorney for the plaintiff it would be impracticable to proceed with the arguments at this time, the Court expressed his willingness to hear the arguments of counsel at any time, either in chambers or at any other place which might suit the convenience of counsel, and the case was closed in the following manner:)

The COURT: The case is now closed so far as the taking of the evidence is concerned by both parties, with the understanding and agreement in the presence of the Court (hereafter to be formally and more exactly stated in stipulations) that the testimony of the witness Juan Valdez, residing at or near Trinidad in the Province of Benguet, and who is to- ill to attend Court shall be in a short time taken by deposition upon the point only as to whether or not shortly after or about the time of the arrival of the American army in the Province of Benguet he accompanied the witness Whitmarsh to the house of José Fianza in Ytogon and there acted as interpreter at the time of the purchase by Mr. Whitmarsh from José Fianza of a certain amount of gold bullion or dust, and the conversation and other circumstances that occurred at the time of such visit; and that under similar arrangement, but with the understanding that counsel for both sides shall be present, the testimony of the witness H. P. Whitmarsh, in sur-rebuttal on the points covered by the deposition of Juan Valdez may be taken at Manila or elsewhere, as counsel shall agree, and when so taken shall be received, filed and

225 attached to the record and become a portion of the evidence in this case.

It is further agreed by counsel in the presence of the court that if counsel shall jointly desire to do so and shall sign a stipulation to that effect, a plat or diagram of the grounds in dispute and of such adjoining territory as may seem necessary or desirable shall be made by an engineer, and if such survey shall be made within the period

of sixty days from the time of the argument of this case before this court the same may be received in evidence without the examination of witnesses upon the same and become a part of the record of the evidence taken in this case on behalf of both parties jointly. The making of such plat is not a pledge to the Court but a matter subject to future agreement between the counsel, if they shall so desire, and the absence or presence of such plat is not an advantage or prejudice to either party in this case.

With these statements and reservations, which are approved by the Court, the case is closed and submitted for argument.

BAGUIO, BENGUET, P. I., *June* 11, 1904.

I hereby certify upon my official oath that the above is a correct transcript of the evidence taken in this case.

WM. M. BROWER,
Clerk of Court, Official Reporter.

226 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Province of Benguet.

JOSE FIANZA ET AL., Plaintiff-,
vs.
JOHN F. REAVIS, Defendant.

The deposition of J. E. Kelly taken before me, Thomas D. Aitken, a Notary Public in and for the City of Manila, Philippine Islands, on the 16th day of May, A. D. 1904, between the hours of 9 a. m. and 10 p. m., at the offices of Coudert Brothers, 86 Calle Rosario, in the City of Manila, Philippine Islands, pursuant to the annexed notice, to be read in evidence on behalf of the defendant in said action at the trial thereof.

The plaintiff refused to appear and the defendant appeared by Charles C. Cohn, one of his attorneys.

A. F. Cameron, Esq., was duly and solemnly sworn to take stenographic notes of the questions propounded to the witness and the answers given thereto, and JAMES E. KELLY being duly sworn to testify the truth the whole truth and nothing but the truth deposes as follows:

Q. Will you state your full name, Mr. Kelly?
A. J. E. Kelly.
Q. Where do you reside?
A. Bua, Benguet.
Q. What is your occupation?
A. Mining.
Q. How long have you resided at Bua?

A. Three years.

227 Q. Have you resided there continuously during that time?

A. Well, with the exception of a month or two months or such a matter.

Q. And have you been engaged in the occupation of mining during all of that time?

A. Yes sir.

Q. When did you first enter the Province of Benguet?

A. About January, 1901.

Q. For what purpose did you go there at that time?

A. To mine.

Q. And to what particular parts of the Province did you go?

A. Pretty much all over the Province.

Q. Are you familiar with the district known as Antamok?

A. Yes sir.

Q. Did you visit that district on that trip in January, 1901?

A. Yes sir.

Q. Did you become familiar with the mining conditions at Antamok at that time?

A. Yes sir.

Q. Are you familiar with the property that is now claimed by Mr. J. F. Reavis under a mining location staked by him?

A. Yes sir.

Q. Did you become familiar with that property in January, 1901.

A. Yes sir.

Q. Will you state what were the conditions of that property when you first became familiar with it?

A. When I first became acquainted with it there was some natives working there, who was I was told working for Holman, that is, the gold they recovered was to be returned to Holman, and they were to receive so much per ounce for every ounce they recovered.

Q. How many natives were working there?

A. I could not say at that time. I do not remember just how many.

Q. Had they the privilege and right to sell to other persons than Holman?

228 A. I understand not. They were compelled to sell to this man Holman, as he had given them the privilege to go on his ground recovering gold.

Q. Do you know Mr. Hans Holman?

A. No, that is the young man.

Q. That is the young man?

A. I do not know him.

Q. Do you know his father?

A. I know his father.

Q. When did you become acquainted with his father?

A. In March or April, 1901.

Q. And in relation to what matter did you become acquainted with him?

A. I went to see Mr. Holman with a view to purchasing his Antamok holdings.

Q. Where did you go to see him?

A. In his office down here, over Clarke's confectionery in Manila.

Q. What if anything transpired at that conference with Mr. Holman?

A. Well, I asked him in regard to his holdings in Antamok District and he told me that he had a mine there that his brother had been looking after for him, No, not his brother his son rather. I asked him if the property was for sale and he said that it was. When I asked him what the price was I do not remember now just what figure he did place on it, but it was out of the question and I told him I could not consider it. Some time later he sent for me and he gave me a more reasonable price, a more reasonable figure on the property, and I questioned him then in regard to title. He told me that he had secured his first papers on the ground, and would have had the final papers had it not been for the Spanish-American war. He also showed me a report made by Mr. Herman, a German mining engineer, who was in Manila at that time. In this report Mr. Herman advised Mr. Holman to raise $100,000 gold for prospecting purposes on the Antamok mines. I learned that the property nad been re-staked by Americans after that, so I dropped it, and I had no more to do with it.

Q. By what American did you learn this had been re-staked?

A. John Reavis.

Q. You abandoned your negotiations on account of this staking by Reavis?

229 A. Yes sir.

Q. Are you familiar with the location of the lands concerning which you negotiated with Mr. Holman?

A. No.

Q. Do you know what mines they were that he was offering you?

A. Yes.

Q. Do you know what they are; do you know just where they lie, that is what I mean by being familiar with their location?

A. Yes.

Q. Where do they lay with reference to the mining lands which are claimed by Mr. Reavis?

A. Practically the same ground.

Q. At the time of your negotiations with Mr. Holman were there any adverse claims other than that of Mr. Reavis that extended into your calculations of negotiations?

A. No sir.

Q. So far as you know then Mr. Holman was the undisputed owner of the mines in question?

A. Yes, as far as I could learn in the district.

Q. Do you know Mr. Jose Fianza?

A. Yes sir.

Q. How long have you known him?

A. Three years.

Q. Did you meet him during your trip in January, 1901?

A. No, I didn't.

Q. When did you first meet him?

A. I may have met him later on in January, 1901; let me see. No, I met him in November, 1902.

Q. Then Mr. Fianza was not in possession of the Antamok mines in January, 1901?

A. Not that I could ever hear of, or never knew anything of it.

Q. Were there any persons upon these mining lands or any part of them other than the employés of Mr. Holman?

A. Not that I could learn.

230 Q. When you met Mr. Jose Fianza and between that time and the present time have you discussed mining matters in the Province of Benguet with him?

A. Not anything further than Mr. Fianza when Gov. Pack sent out his private secretary to locate this ground of Reavis' they came by my place. They went down and located the ground, staked it, and returned to Baguio to the Recorder's office to have it recorded. Mr. Fianza on his way home came by my place and stopped and offered me the claim that he had just recorded, or did not offer it to me, told me it was for sale for $25000. That was the first that I knew of Fianza having the claim or any ground at Antamok.

Q. When was this, with reference to the location of Mr. Reavis' claim; was it before or after?

A. I should judge it was a year or such a matter after.

Q. You are very positive it was after and not before?

A. I am very positive it was more than a year after.

Q. Had you known Mr. Fianza previous to this time?

A. Yes sir.

Q. Had he ever claimed to be the owner of these Antamok mines previous to this time?

A. Never had to me.

Q. You are familiar with the Igorrotes' mining operations, are you not?

A. Quite familiar.

Q. Is it customary for Igorrotes who are engaged in mining to fix values upon their mining properties?

A. No sir.

Q. What would you say concerning the custom of Igorrotes with reference to the assertion of exclusive property rights over mining claims?

A. Well I should say that there is absolutely none as far as I ever could learn.

Q. Will you explain briefly the manner in which the Igorrotes conduct their mining operations?

A. Well, the Igorrotes as a rule will go to mining every year after the rainy season, and may be a certain Igorrote will mine on one river this year, and the next year he will be off on some other stream, or on some other quartz lode just the same. He will find a small little stringer as we call them where you can see some free gold in. Well, he will work that out until he gets tired of

231 it, and he will go off to some other place, find another one. May be, some other Igorrote will come along and go into the one that he has left and work that a while, and in that way

they have run over the whole country and worked in a little hole here and a little hole there, and they work it until they are tired of it, and then go some place else.

Q. While an Igorrote is working his discovery of a pocket or stringer as you term it for how great a distance does he exclude other Igorrotes from working?

A. Well very often he allows several of them to come in with him and give them equal interests in what they recover. He will allow several of his friends to come in and help him to work and give them all an equal interest in what they recover.

Q. In the same pocket?

A. Yes.

Q. But for how great a distance from his discovery does he exclude other Igorrotes from searching for other pockets?

A. He don't exclude them at all. He just claims the little hole he is in, about two by four, just big enough to crawl in.

Q. And when you speak of admitting other persons on equal shares with him you mean admitting them to the same little hole in which he is working?

A. The same little place, yes.

Q. Now for how long does he claim ownership of that particular pocket or hole?

A. Well it depends a great deal on how far this little streak of pay as they call it will extend. May be they will work may be a month and may be a week.

Q. Then I understand you to say that he claims it only during such time as he is working it?

A. Yes sir.

Q. He does not exercise any claim of ownership over it after he has ceased work?

A. No sir.

Q. Have you known Jose Fianza to have conducted any mining operations upon these Antamok mines?

A. No sir. I have not anything more than that the natives who recovered gold any place in the district there were supposed to take it to Fianza.

Q. In what district?

232 A. In the Antamok district or in any part of the barrio of Itogan.

Q. Take it to him for what purpose?

A. To pay their indebtedness or to sell it to him for whatever he had a mind to pay them for it. I have been told by some of the oldest Igorrotes in that district that Fianza at one time used to pay them a medio peso for what was considered an ounce of gold.

Q. That was when gold *is* cheaper than it is now?

A. Yes sir.

Q. This arrangement that you speak of applied to the entire barrio of Itogan?

A. Yes sir.

Q. And it applied to properties other than the Antamok mines?

A. It applied to all properties in the barrio, any place that they could recover gold, it didn't matter where it was.

Q. By virtue of what did this arrangement exist?

A. As near as I can learn he is the high chief of the barrio, and they all looked up to him as such.

Q. Did it exist because of any ownership or claim of ownership on the part of Fianza of these or any particular mines?

A. Not to my knowledge.

Q. When you entered Benguet Province on your mining tour in January 1901, what persons other than Mr. Holman were the owners or claimed to be the owners of the mining properties in that province?

A. In that province?

Q. Yes, that is to your knowledge?

A. Or in that district, which?

Q. Well, let us say in that district?

A. I learned of none in that district.

Q. Now by district, what do you include?

A. Well, Betuan Creek is a district in itself and the Antamok Creek is another district. There were claims located by Americans on Betuan but at that time I could not learn of any claims or claimants on Antamok except this man Holman.

Q. When did you first learn of a claim of ownership on the part of Jose Fianza of any mining properties?

233 A. If I remember rightly it was about August, 1902.

Q. 1903?

A. 1902.

Q. Before or after the location of the Reavis property by Reavis?

A. After.

Q. You are positive about that?

A. Quite positive.

Q. What and where was the first instance that has come to your knowledge of an Igorrote claiming permanent ownership of a mining property of any defined or semi-defined area of land?

A. At the time that Fianza went out to Antamok to stake this property in company with Mr. Wagner who had been sent out with him to stake the ground.

Q. Is that the time that you referred to in your previous testimony when Fianza made an offer to sell his property?

A. Yes sir.

Q. Where does your property lie with reference to the Antamok mines?

A. About a mile and-a-half west from this disputed ground.

Q. Have you been familiar with what has been transpiring at the Antamok mines during the three years that you have been engaged at Bua?

A. Quite familiar.

Q. During your acquaintance with Jose Fianza and previous to the incident just referred to when Jose Fianza made an attempt to locate Mr. Reavis' mining property with the assistance of Gov.

Pack and Secretary Wagner, had you discussed or conversed about the mining properties at Antamok with Jose Fianza?

A. No sir.

Q. You never had?

A. No sir.

Q. Had you discussed during that time or conversed about the Holman claims or Holman mines with Jose Fianza?

A. No sir, I had not. Previous to that time Fianza had told me of mining interests that he held at Itogan where he lives
234 but he stated nothing in regard to any mining interests belonging to him at Antamok.

Q. Had he said anything concerning mining interests belonging to Holman at Antamok?

A. No sir.

Q. Do you know of any additional statements that you desire to add to your testimony with reference to this property or these questions?

A. I do not know that I do anything that would be of any importance.

Q. Mr. Aitken, do you desire to ask any questions?

A. No sir.

(Sig.) J. E. KELLY.

Subscribed and sworn to before me this 16th day of May, A. D. 1904.

(Sig.) THOS. D. AITKEN, *Notary Public*,
Notary Public, Manila, P. I.

Commission expires January 1st, 1905.

NOTE.—I hereby certify that the foregoing deposition was received in this office on May 20th, 1904, at 4 o'clock P. M.

(Sig.) WM. M. BROWER, *Clerk*,
By L. ALMAZAN, *Deputy*.

235 JOSÉ FIANZA ET ALS.
vs.
JOHN F. REAVIS.

Deposition.

The following deposition of JUAN VALDEZ, witness for the plaintiff, was taken before me in my office at Baguio pursuant to agreement hereto attached on the 26th day of May, 1904, at 12 m.

Present: P. M. Moir for Pillsbury and Sutro, Attorneys for plaintiff, J. W. Haussermann, attorney for defendant.

The witness was duly sworn.

Q. What is your name?

A. Juan Valdez.

Q. How old are you?

A. Thirty one.

Q. Where do you live?
A. In Trinidad, Province of Benguet.
Q. Are you married or single?
A. I am married.
Q. What is your occupation?
A. Merchant.

Question- by P. M. MOIR:

Q. Did you go with Mr. Whitmarsh to the house of Fianza in Itogon soon after the arrival of the Americans in Benguet, and in what capacity?

236 A. Yes, I went with him as guide and Interpreter.

Q. State the reason, if you know, why Mr. Whitmarsh went to Fianza's.

A. Mr. Whitmarsh asked me whether I knew any body who has gold for sale, and I told him that there in Itogon Mr. Fianza has.
Q. Who all were present at that interview in Itogon?
A. Only the Igorrotes.
Q. When was it?
A. In December, 1899.
Q. State all that was said and done there then.
A. Nothing, except the sale of gold by Fianza.
Q. Did Fianza state thro' you as Interpreter to Mr. Whitmarsh that he did not own the mines at Antamok?

Objected to as incompetent and leading and is based upon the alleged testimony that is not in the record.

A. No.
Q. Did he state thro' you to Mr. Whitmarsh or any body in your presence that Hollman owned the gold mines at Antamok?
A. I heard nothing.
Q. Was José Garcia present at the house of Fianza when you made that visit to Itogon with Mr. Whitmarsh?
A. No sir.
Q. In what language did you talk to Mr. Whitmarsh in Fianza's house in Itogon?
A. In Spanish.

237 Q. At that time could Mr. Whitmarsh speak Spanish well?
A. Not very well.

Q. What did you and Mr. Whitmarsh do after you bought the gold in Fianza's house?
A. We slept there that night and the next morning returned to Trinidad via Loakan.
Q. How much gold did Mr. Whitmarsh buy of Fianza?
A. More than the weight of thirty (30) pesos.

Cross-examination by Mr. HAUSSERMANN:

Q. How many times did you accompany Mr. Whitmarsh to Itogon as guide or Interpreter?
A. Once only.
Q. How long were you his guide and interpreter?

A. Only those two days.
Q. How do you know it was in December 1899?
A. Because at that time I lived at Trinidad.
Q. How long did you live in Trinidad?
A. More than ten years
Q. Is that the only way you have of fixing the date?
A. Because at that time there was a company of American Soldiers there and Mr. Whitmarsh lived at the convent which was the cuartel.
Q. What was said in Itogon about Hans Holman.
A. Fianza did not say anything about Holman.
Q. What did Whitmarsh say about Hans Holman?
A. I did not hear anything about that.
Q. What was said about the Antamok mines?
A. I did not hear anything said about Antamok.
Q. Did you hear the words Antamok mines mentioned in that interview?
238 A. I did not.
Q. Did Whitmarsh and you go to the Antamok mines either in going or coming?
A. No neither in going nor coming.

Read over and interpreted to the witness, who said it was correct, and signed the same.
(Sgd.) JUAN N. VALDES.

I hereby certify that the above deposition was duly taken and subscribed to before me in my office at Baguio, Benguet Province this the 26th May 1904. Given under my hand and the official seal of my office the day and year above written.
[SEAL OF THE COURT.]
WM. M. BROWER, *Escribano.*
Por LUCIO ALMAZAN.

I hereby certify that the foregoing deposition was received in this office this 26th day of May, 1904, at 5 P. M.
(Signed) W. M. BROWER, *Clerk,*
By LUCIO ALMAZAN, *Deputy.*

239 PLAINTIFF'S "EXHIBIT A."

I, the present Presidente of the Town of Itogon, Province of Benguet, together with the council and I acting as municipal secretary of same, certify that in the archives of this municipality appear the declaration, duly sworn and signed, of Jose Fianza, of legal age, of this municipality, referring to two gold mines situated in Antamoc, of this jurisdiction, which he has enjoyed for more than twenty years, having received such mines by inheritance from his forefathers, which declarations are as follows:

"The undersigned declares under oath that the value of his property, both real and personal, including the two gold mines situated in

Antamoc, of this jurisdiction, amounts to a total of $4000, Mexican. Complying with the provisions of Article 33 Act 48 I make this declaration.

Signed in Itogon, January 31, 1901.

(Signed) JOSE FIANZA."

"The undersigned declares under oath that the value of his property, both real and personal, including the two gold mines situated in Antamoc, of this jurisdiction, amounts to a total of $4000, Mexican. Complying with the provisions of Article 33 Act 48, I make this declaration.

Signed Itogon, January 26, 1902.

(Signed) JOSE FIANZA."

"I declare under oath that the value of my property, both real and personal, including the two gold mines situated in Antamoc, of this jurisdiction, amounts to a total of $5670, Mexican, and complying with Article 33 of Act 48 I make this declaration.

240 Signed in Itogon January 31, 1903.

(Signed) JOSE FIANZA."

In witness whereof this certificate is executed and signed by the aforesaid presidente and municipal council, those who cannot write making their sign, in this municipal building in the town of Itogon, January 12, 1904. All of which is certified by the local secretary.

(Signed) BALBINES,
Municipal Presidente.
JOAQUIN,
TONGAY,
DAMON,
MILLANO,
Councillors.
MIGUEL PICART,
Municipal Sec'y.

Received in this office this 18th day of January, 1904. I certify.

W. M. BROWER, *Clerk.*
By L. ALMAZAN, *Deputy.*

241 PLAINTIFF'S "EXHIBIT B."

JOSE FIANZA
vs.
J. F. REAVIS.

No 760. Province of Benguet, Town of Itogon, $20, Mex.

ITOGON, *February* 11, 1901.

Received from Presidente Jose Fianza the sum of $20, Mex., as his annual contribution upon property declared by him worth $4000, Mex. (Art. 33 Act No. 48).

(Signed) JOSE FIANZA, *Presidente.*
" NICOLAS CAMILAN, *Secretary,*
Witness to the signature of the Presidente.

A true copy:
(Signed) WILLIAM F. PACK,
Governor of Benguet.

NOTE.—I certify this was received the 15th day of January, 1904.
(Sgd.) W. M. BROWER, *Clerk,*
By L. ALMAZAN, *Deputy.*

242 PLAINTIFF'S "EXHIBIT C."

JOSE FIANZA
vs.
J. F. REAVIS.

"2443. $20, Mex.

PROVINCE OF BENGUET,
TOWN OF ITOGON, *January* 26, 1902.

Received of Jose Fianza the sum of $20, Mexi., as his annual contribution upon property worth $4000, Mex., according to Art. 33 (of Act No. 48).

(Signed) Name: BITUDIO,
Municipal Presidente.

Witness:
ROSENDO TORCUATOS,
Municipal Secretary.

A true Copy:
(Signed) WILLIAM F. PACK,
Governor of Benguet.

NOTE.—I certify that this was received the 15th day of January, 1904.
(Sgd.) W. M. BROWER, *Clerk,*
By LUCIO ALMAZAN, *Deputy.*

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v.
Fianza
p. 214

Plaintiff's Exhibit "C".
Wm. M. Brower,
Clerk.

Croquis de las dos Minas de Jose Fianza en Ampasit y Antamoc del barrio Antamoc, Itogon, Benguet.

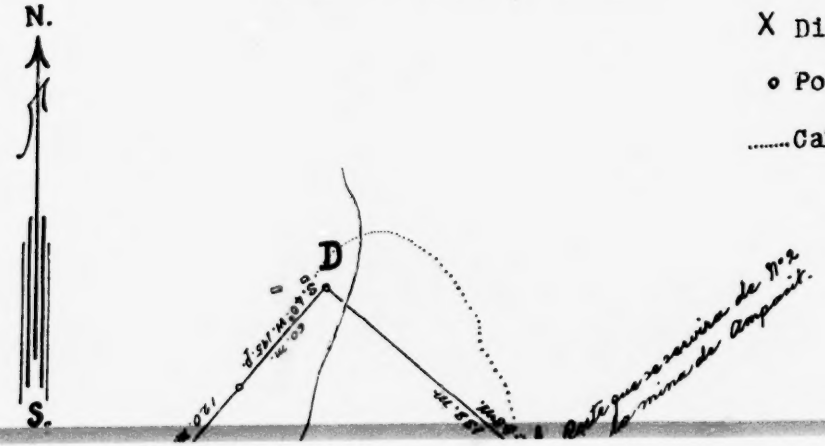
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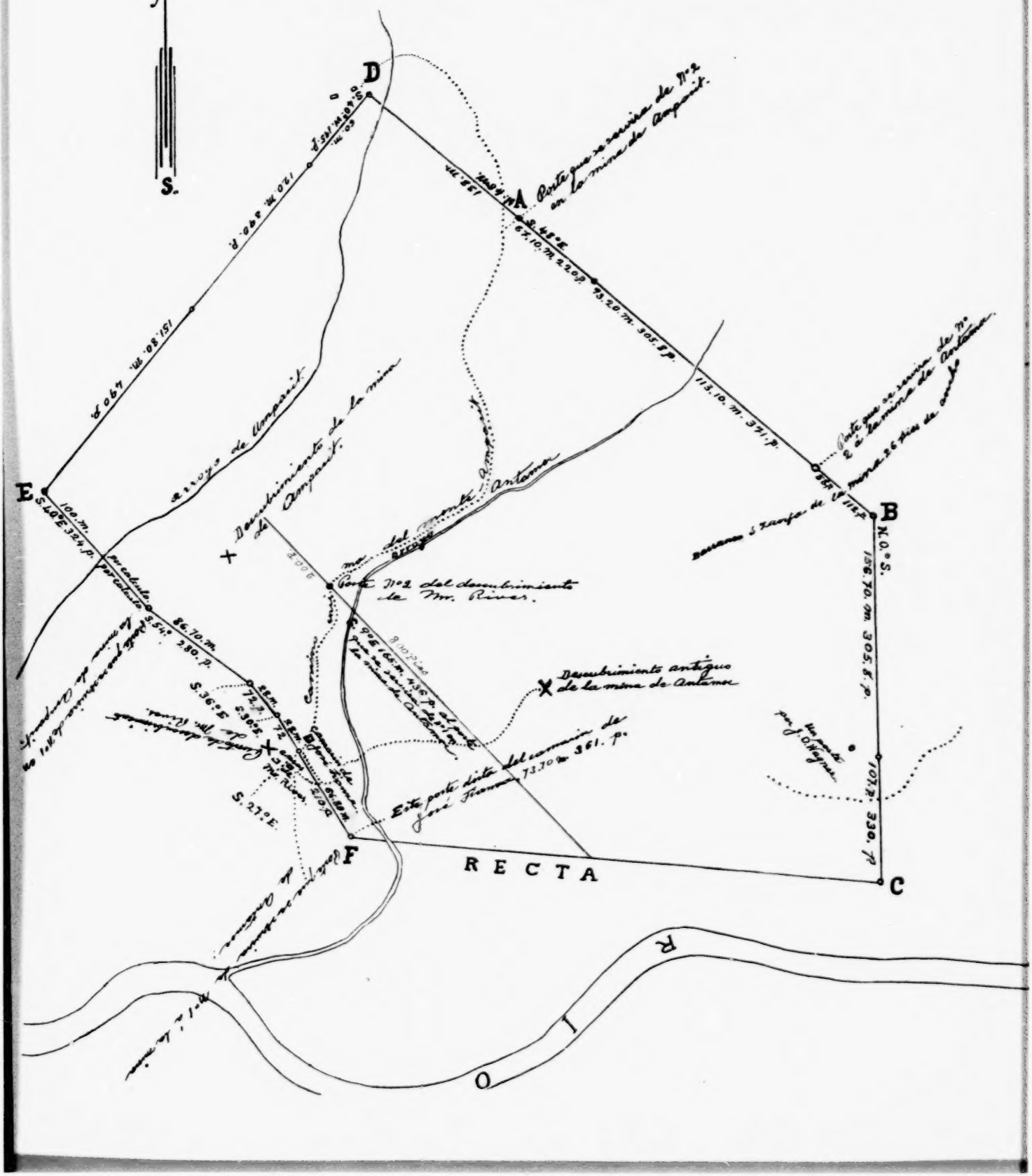
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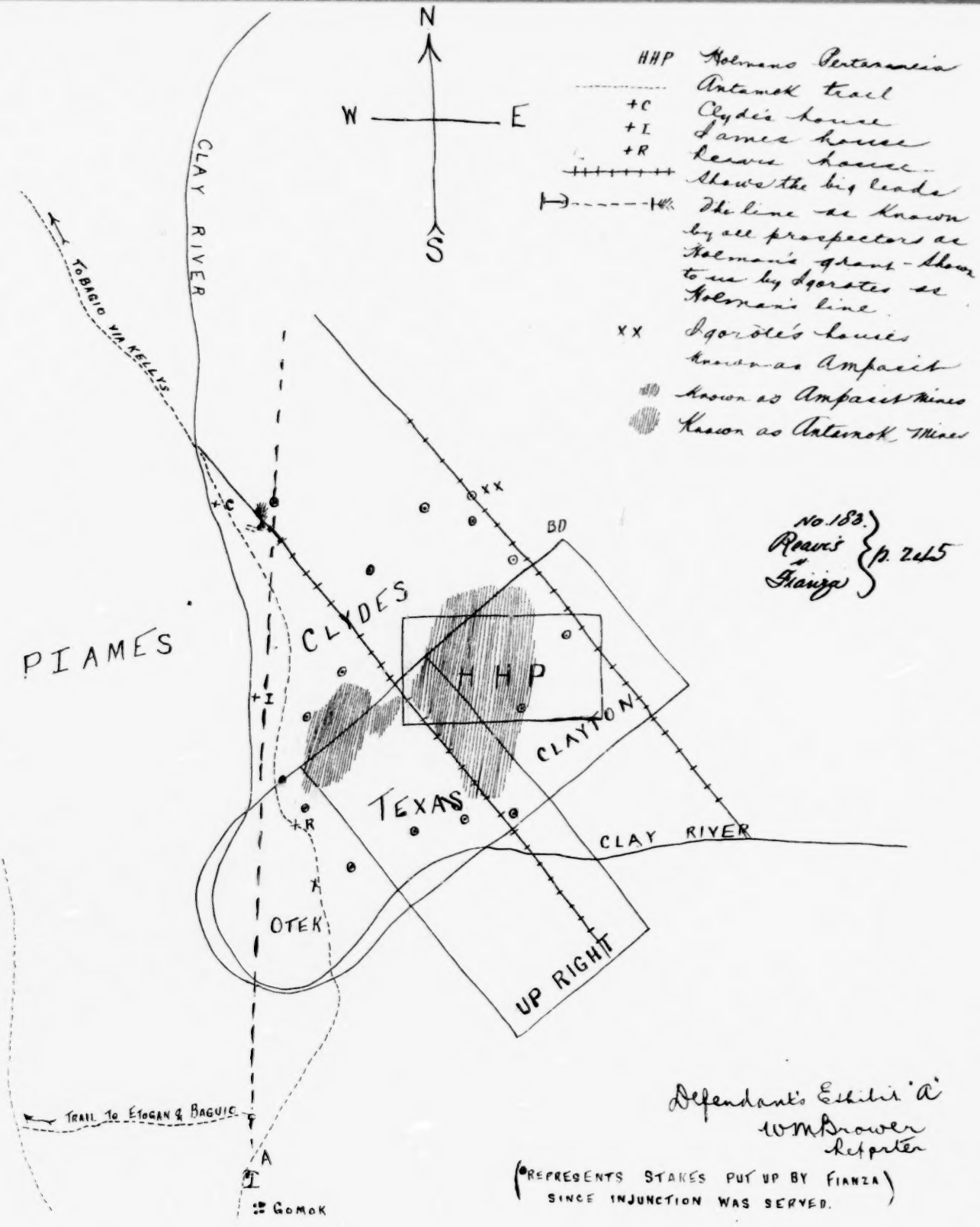
X Discubrimientos.

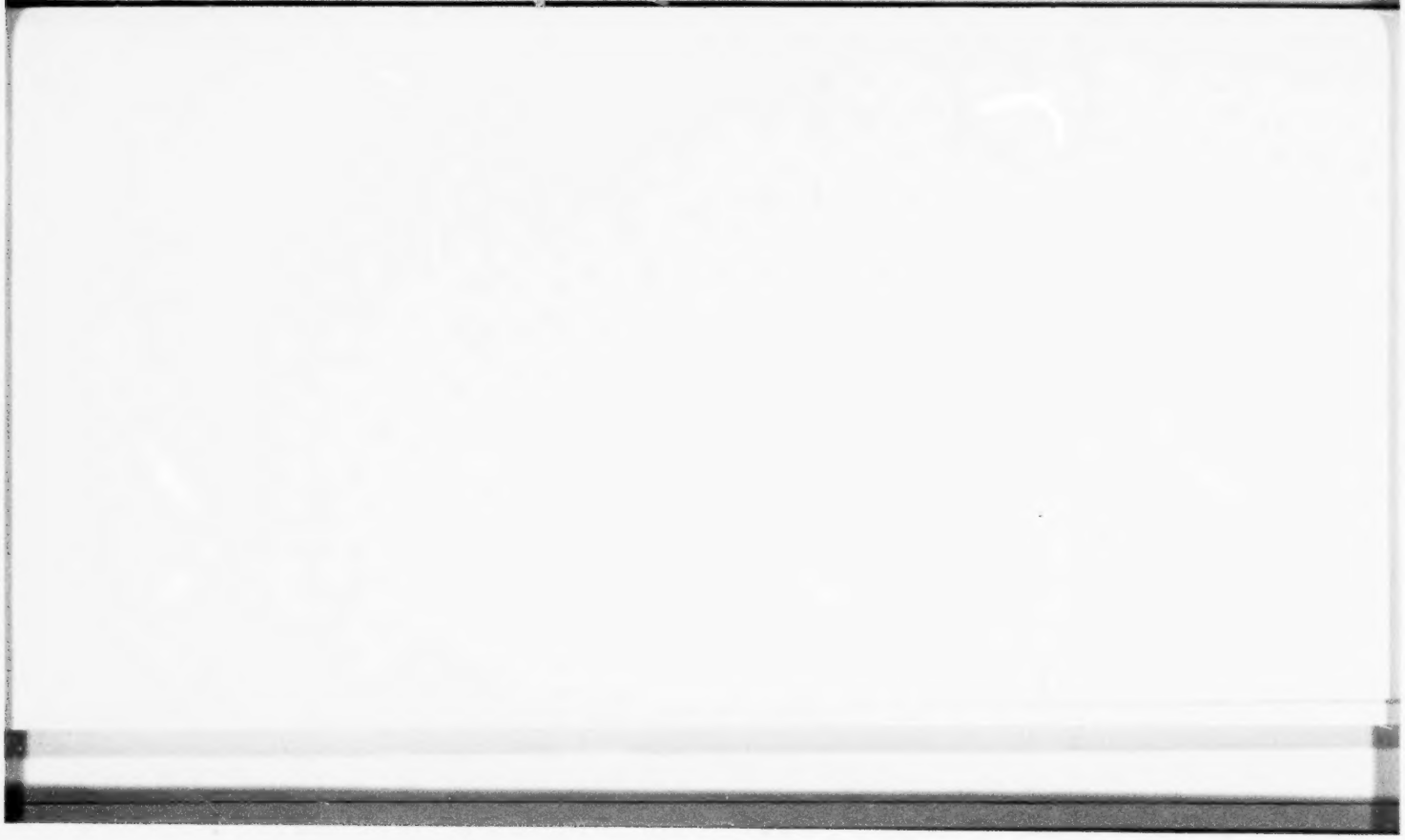
o Postes.

.....Camino.




D
S.
A
Poste que señala el de N.º 2 en la mina de Ampuis.
S. 45° E.
67.10 m. 220 p.
93.20 m. 305 p.
113.10 m. 371 p.
Poste que señala el de N.º 2 de la mina de Antaime. 36 pies de arco
B
N. 0° S.
158.70 m. 305 p.
Rumbo y rampa de la mina
Poste
330 p.
C
RECTA
F
E
S. 40° E. 151.80 m. 498 p.
120 m. 390 p.
60 m.
S. 40° E. 158 p.
Descubrimiento de la mina de Ampuis.
Rumbo y rampa de la mina de Ampuis.
Descubrimiento de la mina de Antaime
Corte del Puente de Antaime
Corte N.º 2 del descubrimiento de Mr. River.
Descubrimiento antiguo de la mina de Antaime
Este poste dista del camino de José Fromet 13.70 m. 361. p.
Camino de José Fromet
Camino de Ampuis
Camino de Condrieu
Camino de Antaime
Mr. River
S. 27° E.
S. 36° E.
100 m.
S. 40° E. 324 p.
Por calculo 3.54 p. 280. p.
86.10 m.
Por calculo
Rumbo y rampa de la mina de Ampuis
Rumbo y rampa de la mina de Antaime
R
I
O


N
W
E
S
HHP Holmens Pertamaria
Antamok trail
+C Clyde's house
+I James house
+R Lewis house
Shows the big leads
The line as known by all prospectors as Holman's grant - shown to us by Igorotes as Holmen's line
XX Igorotes claims known as Ampaict
Known as Ampaict Mines
Known as Antamok Mines
CLAY RIVER
TO BAGIO VIA KELLYS
No 183. Reavis to Fianza p. 245
PIAMES
CLYDES
HHP
CLAYTON
TEXAS
CLAY RIVER
OTEK
UP RIGHT
TRAIL TO ETOGAN & BAGUIO
GOMOK
BD
XX
+I
+R
+C
A
Defendant's Exhibit 'A'
W.M. Brower
Reporter
(REPRESENTS STAKES PUT UP BY FIANZA SINCE INJUNCTION WAS SERVED.)



243 PLAINTIFF'S "EXHIBIT D."

JOSE FIANZA
vs.
J. F. REAVIS.

$28.35, Mex. No. 6290.

PROVINCE OF BENGUET,
TOWN OF ITOGON, *February* 22, 1903.

Received of Jose Fianza, of this town, the sum of twenty-eight pesos and thirty-five centavos, as annual contribution upon lands according to Art. 33 of Act. No. 48.

Name: PALCALSO,
Office, Municipal Presidente.

Witness:

MIGUEL RICARTE,
Municipal Secretary.

A true copy:

(Signed) WILLIAM F. PACK,
Governor of Benguet.

NOTE.—Received this 15th of January, 1904.

(Sgd.) W. M. BROWER, *Clerk*,
By L. ALMAZAN.

(Here follows diagrams marked pages 244 & 245.)

246 DEFENDANT'S EXHIBIT "F."

Location Notice.

OCTOBER 1ST, 1902.

This certifies that the undersigned citizen of the United States of America having complied with local customs regulations &c. and with the laws of the United States (see note with diagram) and with the laws enacted by Congress March — 1902 *i*ntitled an Act to provide temporarily for conditions in the Philippine Islands—has this day located and claim- 1000 linear feet along a quartz lode bearing gold and 1000 feet in width:—situated in "Antamok," Province of Benguet, Island of Luzon, P. I. the name of claim to be "Texas" and fully described as follows—*L*aying north of the Clay River and near the Citio of "Antamok" and *l*aying on a quartz lead running in a north west and southeast direction joining the river at the south west corner about 500 feet more or less below the crossing of the trail leading to "Gomok" from "Antamok."

Located Oct. 1st. 1902.

Locator, JOHN F. REAVIS.

Recorded Oct. 10, 1902, at 9.45 A. M.

(Sgd.) P. E. WAGAR,
Prov. Sec'y.

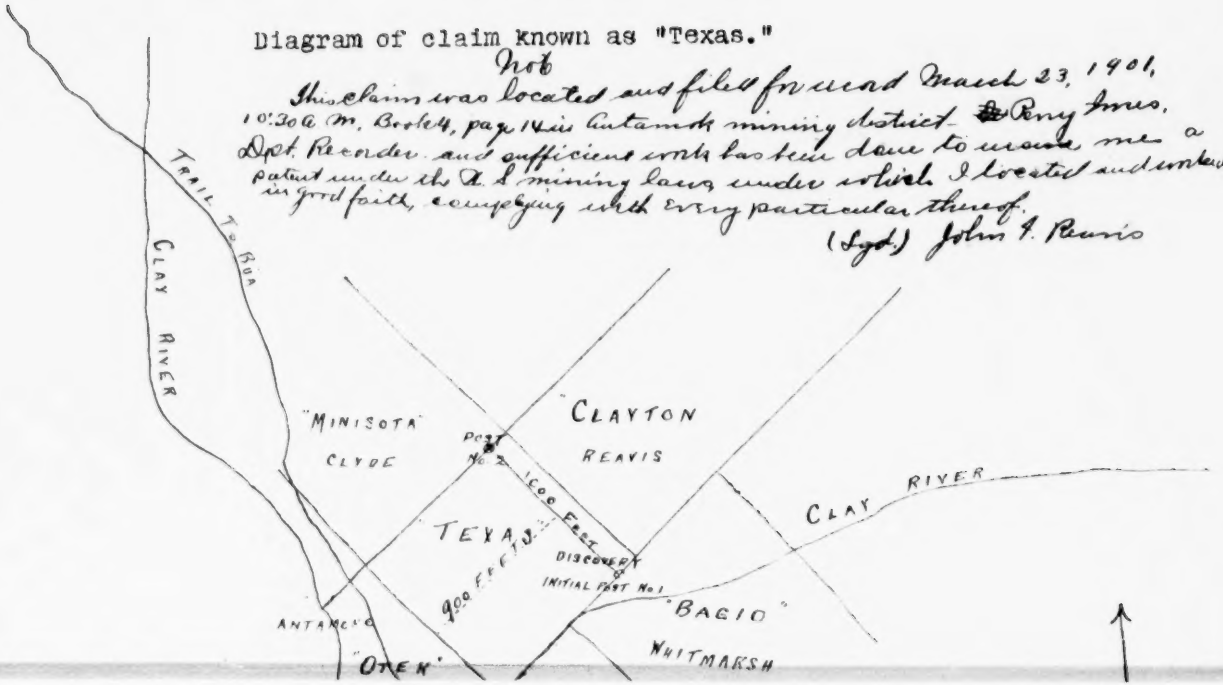
(Here follows diagram marked p. 247.)

S7.

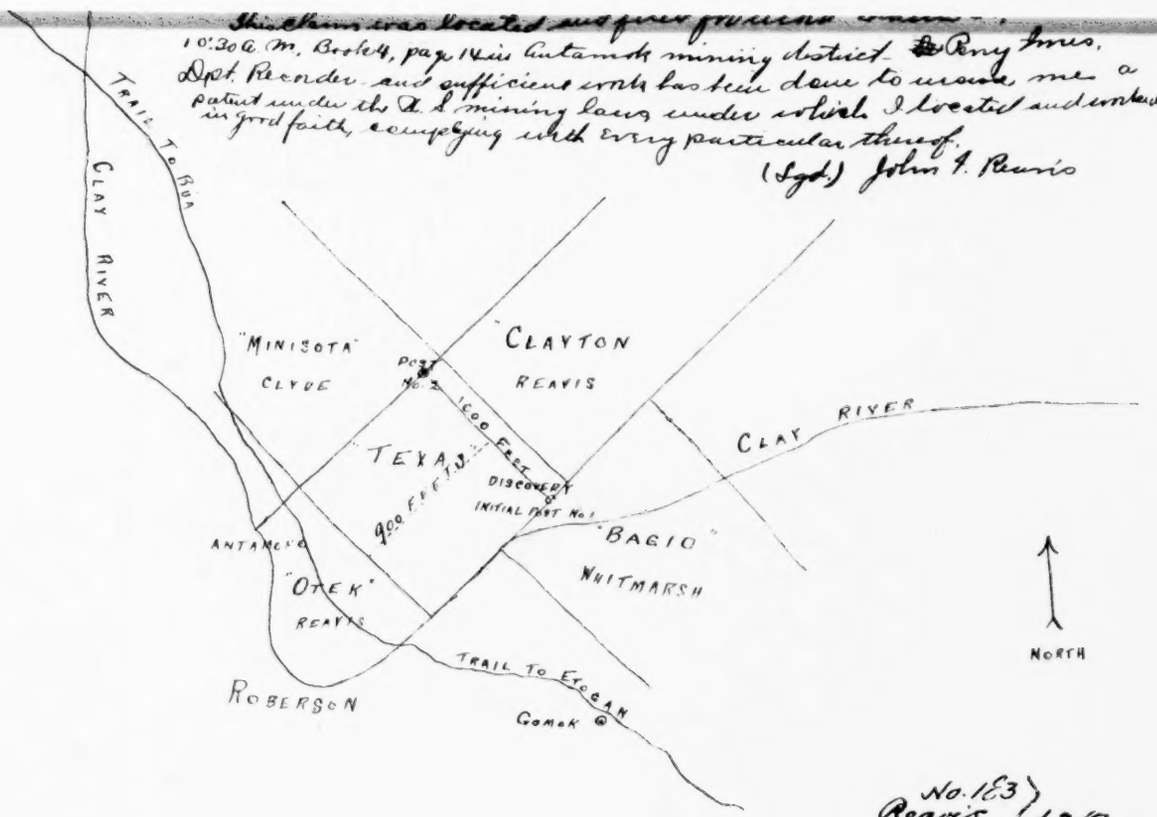
Diagram of claim known as "Texas."

This claim was located and filed for record March 23, 1901, not 10:30 A. M. Book 4, page 14 in Antamoh mining district by Perry Innes. Dpt. Recorder and sufficient work has been done to secure me a patent under the U. S. mining laws under which I located and claim in good faith, complying with every particular thereof.

(Sgd.) John T. Innis



This claim was located and given [illegible]
10:30 A.M. Book 4, page 14 in Antamok mining district & Benguet
Dept. Recorder and sufficient work has been done to entitle me a
patent under the U.S. mining laws under which I located and entered
in good faith, complying with every particular thereof.
(Sgd) John F. Reavis



No. 183
Reavis } ft. 347
Pianza

Initial Post No. 1. "Texas" quarter claim bearing gold. Located Oct. 1, 1902. Locator John F. Reavis. Direction of Post No. 2. Northwest 1000 linear feet. Number of feet laying northeast of line from post number two to post number one 100. number of feet lying southwest of line 900. See discovery 100 feet northwest of this Post (Post No. 1)

Located Oct. 1, 1902.

Locator

Attest John F. Reavis.

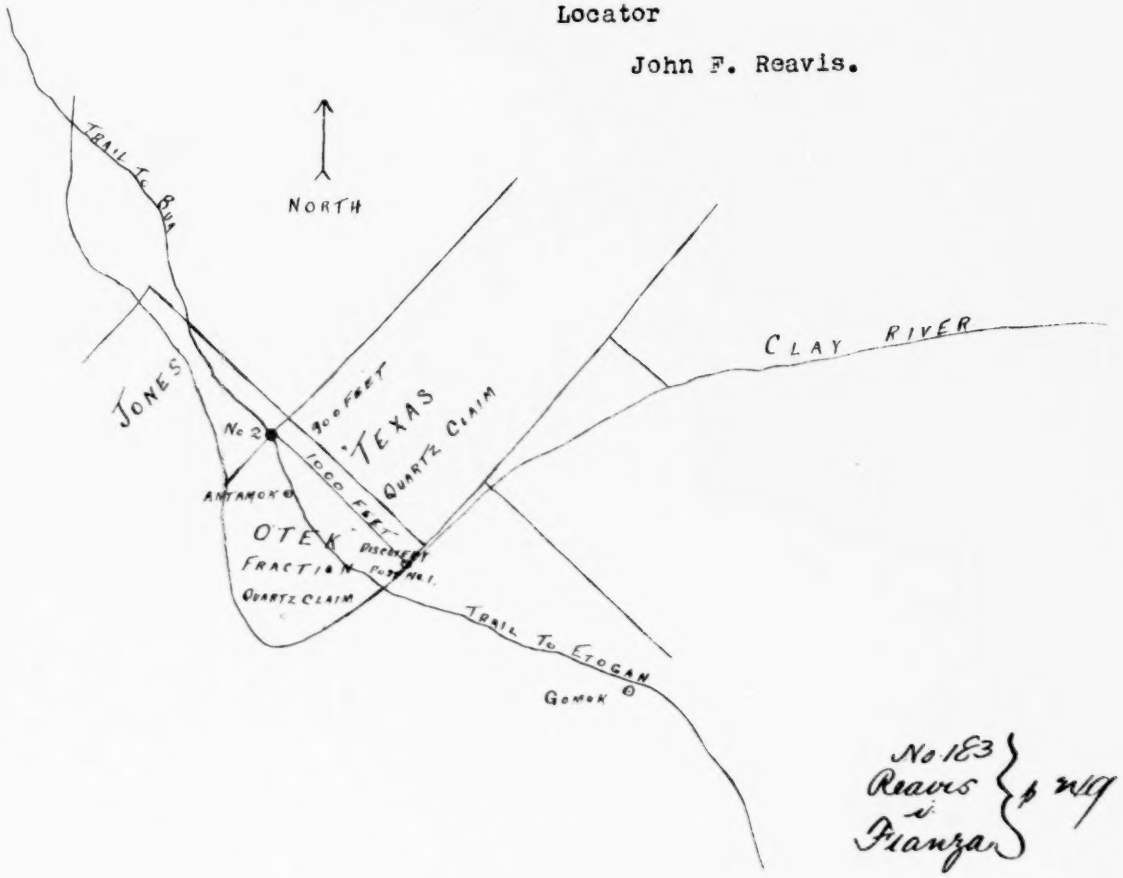
H. Clay Clyde
H. P. Whitmarsh.

Recorded Oct 10, 1903 at 9 A.M.
Recorded by John F. Reavis
Oct. 1, 1902
Antamok
74

Note - this claim has been held and worked under the United States laws since located, Feb. 1901, by me and I have lived on this claim since that date -

Locator

John F. Reavis.



Initial post No. 1, "OTEK" quartz claim, number one. Locator John F. Reavis.

Post No. 2 is 1000 feet linear along this quartz lead - 100 feet lays northeast of a line from Post No. 1 to Post No. 2 and 900 feet lays southwest of the line - Provided - - that the southwest line shall comply with the meanderings of the river bank south and west including bed of river and there be a full claim otherwise this shall be a fraction of a claim known as the "OTEK".- Descovery north of No. 1, Post across the river about 100 feet.

OTEK
LOCATED
John F. REAVIS
POST 1. No 1
RECORDED
OCT 10, 1901
AT 10 A.M.

248 DEFENDANT'S EXHIBIT "G."

Location Notice.

OCT. 1, 1902.

Notice is hereby given that the undersigned citizen of the United States of America having complied with "Local Custom- regulations, etc. and with the laws of the United States (See note with diagram) and with the laws enacted by Congress March 1902, "entitled An Act to Provide Temporarily for conditions in the Philippine Islands" have this day located and claim- 1000 linear feet along a quartz lode bearing gold and 1000 feet in width situated in "Antamok" Province of Benguet, Island of Luzon P. I. The name of the claim to be "Otek" and fully described as follows:

Laying north of Clay River and laying at sitio of "Antamok" and along a quartz lode bearing gold and other metals the lode running in a northwest and southeast direction joining the river on the south and west and joining the Texas northeast and the trail going from Bua to Gomok and Etogan passes over the claim north and south.

Located Oct. 1, 1902.

Locator, JOHN F. REAVIS.

Attest.

H. CLAY CLYDE.
W. P. WHITMARSH.

Recorded Oct. 10, 1902, at 10:00 A. M.

P. E. WAGAR,
Prov. Sec'y.

(Here follows diagram marked p. 249.)

250 DEFENDANT'S EXHIBIT "H."

Location Notice.

This certifies that the undersigned citizen of the United States of America having complied with "Local Customs Laws and Regulations, and with the laws of the United States—(See note with diagram) and with the laws as enacted by Congress March 1902. Intitled an Act to Provide temporarily for conditions in the Philippine Islands—Has this day located and claim- 1000 linear feet along a quartz lode bearing gold—and 1000 feet in width. Situated in Antomok, Province of Benguet Island of Luzon P. I. The name of claim to be "Clayton" and fully described as follows—Laying north of Clay River and near the Sitio of "Antamok" and laying on a quartz lode run-ing in a northwest and southeast direction, joining the "Texas" on south west, the "Bagio" southeast, and the "Antamok" on the north west.

Located Oct. 3, 1902.

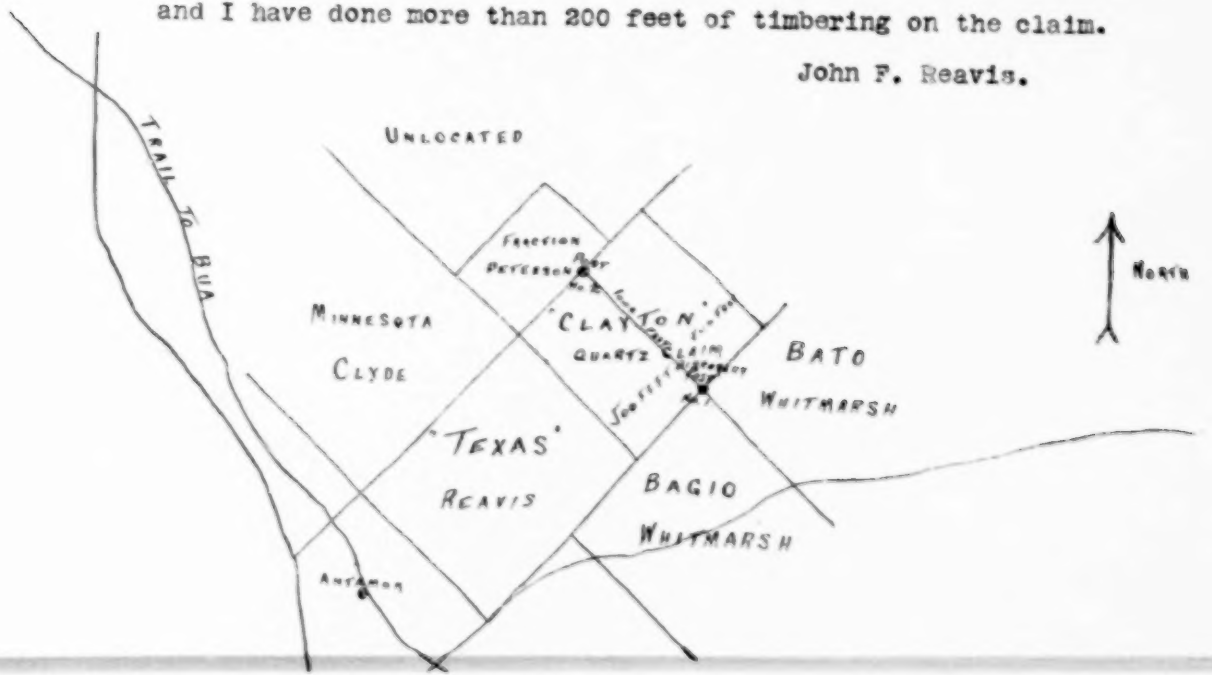
Locator, JOHN F. REAVIS.

Recorded Oct. 10, 1902, at 10:20 A. M.
(Sig.) P. E. WAGAR,
Prov. Sec'y.

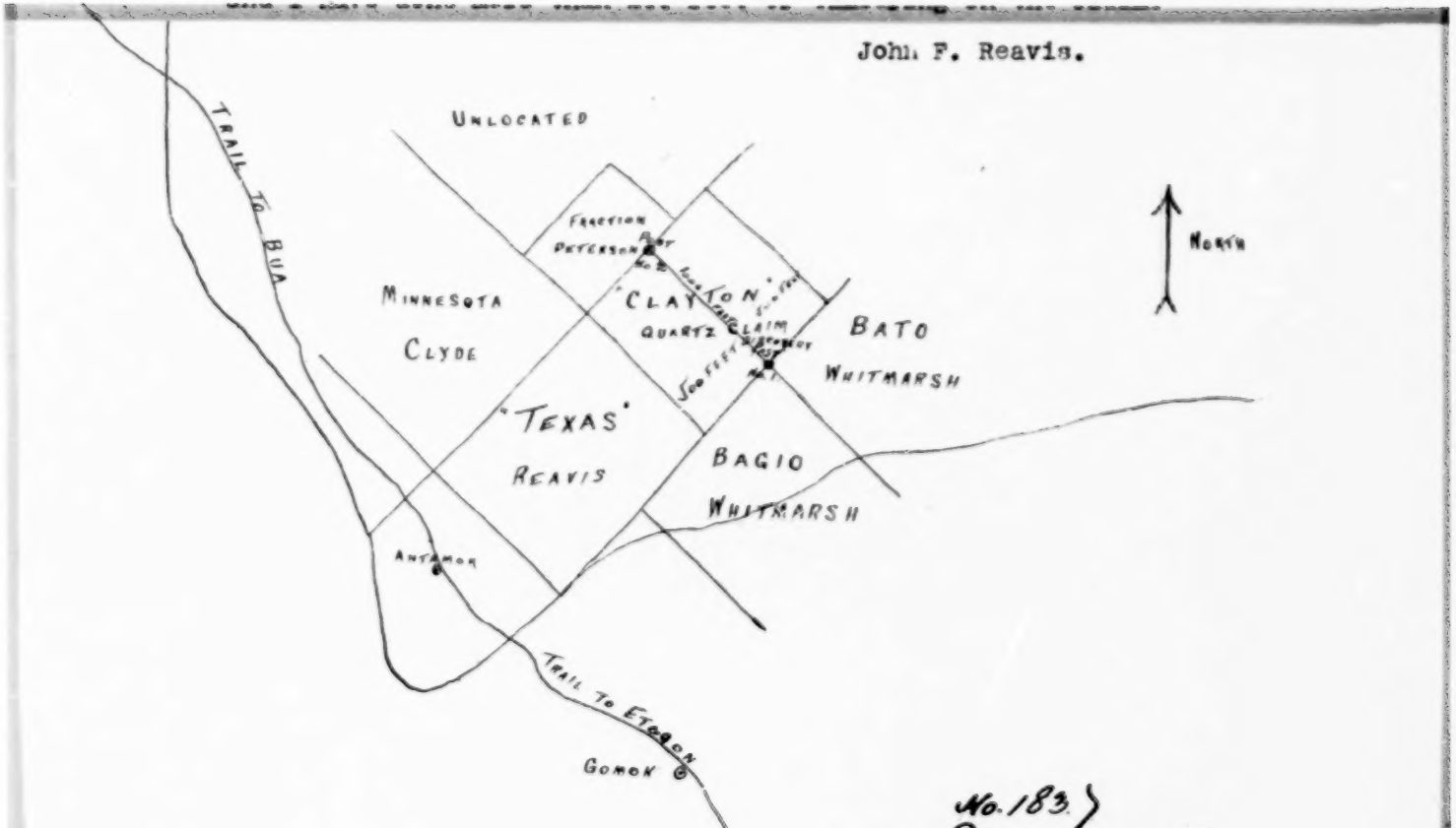
(Here follows diagram marked p. 251.)

Note:- This claim was located sometime in March of 1901,- and I have done more than 200 feet of timbering on the claim.

John F. Reavis.



John F. Reavis.



No. 183.

Initial Post No. 1. "Clayton."

Locator John F. Reavis. Located Oct. 3, 1902.

Direction of Post No. 2 northwest. number of feet laying northeast of line 500. number of feet laying southeast of line 500. line running from this Post 1000 linear feet in northwest direction. See descovery at this Post. Quartz gold.

Located Oct. 3, 1902.

Attest. Locator John F. Reavis.

H. Clay Clyde
H. P. Whitmarsh.

Clayton
Oct 1, 1902
Recorded Oct 10, 1902
at 10.20 A.M.

252 *Translation—Defendant's Exhibit "I."*

We Igorotes make a sign of the cross opposite our names as evidence of the truth that all the lands owned by us in the Barrio of Antamoc, jurisdiction of Itogon, District of Benguet, are hereby transferred to Francisco Balancio, resident of Trinidad, of this district for the sum of P25.00 for the property of Marino; P25.00 for property of Docayog; P15.00 for property of Erico; and P10.00 for property of Campalas.

A map or plan of our land accompanies this receipt so that the purchaser has security.

Also our witnesses make the sign of the cross opposite their names so that the said receipt can be presented to the governor of this district for its proper legal effect.

Antamoc, September 12, 1901.

ERICO x.
MARINO x.
DOCAYOG x.
CAMPALAS x.

Witnesses who occupy the land sold.
CAMANTILES x.
DEPLAY x.

NOTE.—I hereby sell the lands according to the plan. I also have delivered to Don Juan as such purchaser a receipt of the lands as bought by me from said Igorotes, so that said purchaser can keep same for its proper legal effect, this 12th day of December, 1901.

(Signed) FRANCISCO BALANCIO.

253 *Translation—Defendant's Exhibit "J."*

I Francisco Balancio, resident of Trinidad, jurisdiction of this district of Benguet, declare in truth that the lands situate in this barrio of Antamoc, Municipality of Itogon, of this district of Baguio, formerly Benguet, has been sold by me to Sr. Don Juan, an American engaged in mining, who stated of his free will that such property was worth P100.00, including the house, and I having agreed to comply with the indorsement or note placed on the plan of these lands being those which I purchased from four igorotes named Erico, Marino, Docayog and Campalas.

In testimony whereof, I subscribe, and also put the names of the Igorote vendors, as owners of the land, who have placed a sign of the cross opposite their names; and likewise the witnesses have also placed a sign of the cross, so that the said Don Juan at any time may apply to the superior government of this district in order that he may comply with what is required by law.

Barrio of Antamoc, September 12, 1901.

(Signed) FRANCISCO BALANCIO.
ERICO x.
MARINO x.
DOCAYOG x.
CAMPALAS x.

Witness as occupants of the lands sold:
CAMANTILAS x.
DEPLAY x.

254 DEFENDANT'S EX. "K."

PHILIPPINE ISLANDS,
Province of Benguet:

John F. Reavis, being first duly sworn, deposes and says that *the* is a citizen, of the United States of America, and more than twenty-one years of age; that he resides in Baguio, province of Benguet, and is personally acquainted with the mining claim known as the Otek quartz claim, situate in the barrio of Antimok, province of Benguet, Island of Luzon, P. I., the declaration of location of *with* is recorded in the office of the mining recorder of said province, in book "A" of Records of mining claims, at page 75; that between the 1st day of January, 1903, and the 26th day of December, 1903, not less than One hundred dollars *work* of labor was performed or improvements made upon said claim, not including the work done prior to the date of recording the same. Such work was done or improvements made by and at the expense of John F. Reavis, the owner of said claim, for the purpose of complying with the laws of the United States relating to an-nal assessment work and Jim Wilber & self were the persons employed by said owner who did such work or made such improvements, and that said work or improvements consisted of and are described as follows, to wit: One Tunnel 10 feet 30 lbs. of Powder @ 1.50 gold per lb. (45.00) used in blasting.

"Otek"

John F. Reavis

Recorded Dec. 30, 1903, 10:00 a. m. (Sig.) Emigdio Octairano, Mining Recorder.

(Sig.) JOHN F. REAVIS.

Subscribed and sworn to before me this 26 day of December, 1903.

(Sig.) J. O. WAGNER,
Notary Public.

Term ending Dec. 31st 1904.

I hereby certify the above to be a true and exact copy.
Baguio, May 28, 1904.

(Sig.) EMIGDIO OCTARIANO,
Provincial Secretary.

255 DEFENDANT'S EX. "L."

PHILIPPINE ISLANDS,
Province of Benguet:

John F. Reavis, being first duly sworn, deposes and says that he is a citizen, of the United States of America, and more than twenty-one years of age; that he resides in Baguio, province of Benguet, and is personally acquainted with the mining

"Clayton"

John F. Reavis

claim known as the Clayton quartz claim, situate in the barrio of Antimok province of Benguet Island of Luzon, P. I., the declaration of location of which is recorded in the office of the mining recorder of said province, in book "A" of Records of mining claims, at page 76; that between the 1st day of January, 1903, and the 26 day of December, 1903, not less than One Hundred dollars' worth of labor was performed or improvements made upon said claim, not including the work done prior to the date of recording the same. Such work was done or improvements made by and at the expense of John F. Reavis, the owner of said claim for the purpose of complying with the laws of the United States relating to annual assessment work, and Jim Wilber & self were the persons employed by said owner who did such work or made such improvements, and that said work or improvements consisted of and are described as follows, to wit: One Tun-el 10 feet, 30 lbs. of powder @ 1.50 gold per lb. (45.00) used in blasting.

Recorded Dec. 26, 1903, 10:00 a. m. (Sig.) Emigdio Octairano, Mining Recorder.

(Sig.) JOHN F. REAVIS.

Subscribed and sworn to before me this 26 day of Dec., 1903.

(Sig.) J. O. WAGNER.
Notary Public.

Term ending Dec. 31st, 1904.

I hereby certify the above to be a true and exact copy.
Baguio, May 28, 1904.

EMIGDIO OCTARIANO,
Provincial Secretary.

256 DEFENDANT'S EX. "M."

PHILIPPINE ISLANDS,
Province of Benguet:

John F. Reavis, being first duly sworn, deposes and says that he is a citizen of the United States of America, and more than twenty-one years, of age; that he resides in Baguio, province of Benguet, and is personally acquainted with the mining claim known as the Texas (quartz) claim, situate in the barrio of Antimok province of Benguet, Island of Luzon, P. I. the declaration of location of which is recorded in the office of the mining recorder of said province, in book "A" of Records of mining claims, at page 74; that between the 1st day of January, 1903, and the 26 day of December, 1903, not less than One hundred dollars' worth of labor was performed or improvements made upon said claim, not including the work done prior to the date of recording the same. Such work was done or improvements made by and at ex-

"Texas"

John F. Reavis

Recorded Dec. 26, 1903, 10:00 a. m. (Sig.) Emigdio Octairano, Mining Recorder.

pense of John F. Reavis, the owner of said claim, for the purpose of complying with the laws of the United States relating to annual assessment work, and Jim Wilber and self were the persons employed by said owner who did such work or made such improvements, and that said work or improvements consisted of and are described as follows, to wit: one Tunnel 10 feet, 25 lbs. of Powder @ 1.50 gold per pound,—37.50 gold used in blasting.

(Sig.) JOHN F. REAVIS.

Subscribed and sworn to before me this 26 day of December, 1903.

(Sig.) J. O. WAGNER,
Notary Public.

Term ending Dec. 31st, 1904.

I hereby certify the above to be a true and exact copy.
Baguio, May 28, 1904.

EMIGDIO OCTARIANO,
Provincial Secretary.

257 DEFENDANT'S EX. "O."

Notice of Location.

Notice is hereby given that the undersigned, a native of the Philippines and a subject of the United States, and over 21 years of age and having complied with the requirements of the local customs, laws and regulations, has located 1500 lineal feet on the quartz lode, situated in Antimoc Mining District, Benguet Province, and described as follows:

Commencing at this Notice, which is posted at initial Post and running in a westerly direction 1500 feet and —— in a —— direction on and along the course of said vein and the boundaries are marked by Posts set three hundred feet from the center line of said claim, at each end and side center, each post being plainly marked as to its position to said claim the Initial Post is situated about 100 feet above trail going Easterly out of Antimoc about 50 feet from the only pine tree on that side of the mountain & about 100 feet from the beginning of a large land slide & within 3 feet of said slide.

Said claim is to be known as the Antimoc & Ampasit Mine.

And I intend to hold and work said claim as provided by the Statutes of the United States, and by local customs and rules of the Antimoc Mining District.

Located this 9 day of May, 1902.

(Sig.) JOSE FIANZA, *Owner.*

Witness:
J. O. WAGNER,
BETODIO,
Pres. Itogon.
thumb
His x mark.
mark

(Witness to signature)
H. CLAY CLYDE.

258 DEFENDANT'S EX. "P."

Know all men by these presents, that I, John F. Reavis of Antimok, Province of Benguet, Luzon, P. I., citizen of the United States and over (21) years of age do hereby locate and claim for mining purposes one thousand (1000) feet in length by one thousand (1000) feet in width on this mineral bearing claim described in the following Hereby made Affidavit that the legal notices and posts have been put up; that mineral has been found in place on the claim; and that the ground is unoccupied by any other person.

That notice on No. (1) post, reads as follows: "Texas" claim; Locator John F. Reavis; Located Oct. 1-1902. "Initial Post:" Post No. Two (2) is northwesterly one thousand (1000) feet from Post No. One (1). One hundred (100) feet of this claim lies North east and Nine hundred (900) feet South West of the line running from No. One (1) to No. Two (2) Posts. That notice on No. (2) post, reads as follows: "Texas" claim Locator John F. Reavis; Located Oct. 1, 1902. That location of this claim is as follows: Situated in Antamok Province of Benguet, Luzon, P. I. Lying north of Clay River and near the sitio of Antamok. This claim shall be known as the "Texas" Located Oct. 1-1902.

In witness whereof I have hereunto set my hand and seal this tenth day of October One thousand nine hundred and Two.

(Sig.) JOHN R. REAVIS. [s.]
(Sig.) ——— ———. [s.]

Signed and delivered in the presence of,
WILLIAM F. PACK.

ISLAND OF LUZON,
Province of Benguet, P. I.:

Be it known, that on this tenth day of October One thousand nine hundred and Two before me, P. E. Wagar Prov. Secy. in and for said Province personally appeared John F. Reavis above named who is to me known to be the person who executed the above Affidavit and acknowledge- the same to be his free act and deed.

[SEAL.] P. E. WAGAR,
Secretary for Province of Benguet.

NOTE.—I hereby certify that on the 23rd day of May, 1904, at 9.00 A. M., the foregoing document was received in this office.

WM. M. BROWER, *Clerk,*
By LUCIO ALMAZAN, *Deputy.*

259 DEFENDANT'S EX. "P."

Know all men by these presents, that John F. Reavis of Antamok, Province of Benguet, Luzon, P. I. citizen of the United States and over (21) years of age do hereby locate and claim for mining purposes one thousand (1000) in length by one thousand (1000)

feet in width on this mineral bearing claim described in the following

Hereby make Affidavit that the legal notices and posts have been put up; that mineral has been found in place on the claim; and that the ground is unoccupied by any other person.

That notice on No. — post, reads as follows: "Clayton" claim; Locator John F. Reavis; Located Oct. 1, 1902. Initial "Post post No. 2, is northwest one thousand (1000) feet from Post No. 1. One hundred feet of this claim lies northeast and nine hundred (900) feet southwest line running from No. one (1) to No. two (2) Posts. That notice on No. (2) post, reads as follows: Locator John F. Reavis, Located Oct. 1, 1902. That location of this claim is as follows: Situated in Antamok Province of Benguet Luzon P. I. laying north of Clay River and near the sitio of Antamok laying on a quartz lode running in a northwest and southeast and joins the "Texas" on Southwest the Baguio Southeast, and the Antamok on the northwest

This claim shall be known as the "Clayton" Located Oct. 1, 1902.

In witness whereof I have hereunto set my hand and seal this tenth day of October One thousand nine hundred and two.

(Sig.) JOHN F. REAVIS. [s.]
(Sig.) ——— ———. [s.]

Signed and delivered in the presence of,
WILLIAM F. PACK.

ISLAND OF LUZON,
Province of Benguet, P. I.:

Be it known, that on this tenth day of October One thousand nine hundred and two before me, P. E. Wagar Prov. Sec'y in and for said province personally appeared John F. Reavis above named who is to me known to be the person who executed the above affidavit and acknowledged the same to be his free act and deed.

[SEAL.] P. E. WAGAR,
Secretary for Province of Benguet.

NOTE.—I hereby certify that on the 23rd day of May, 1904, at 9.00 A. M., the foregoing document was received in this office.

WM. M. BROWER, *Clerk*,
By L. ALMAZAN, *Deputy*.

260 DEFENDANT'S EX. "P."

Know all men by these presents, that I, John F. Reavis of Antamok, Province of Benguet, Luzon, P. I. citizen of the United States and over (21) years of age do hereby locate and claim for mining purposes one thousand (1000) in length by one thousand (1000) feet in width on this mineral bearing claim described in the following:

Hereby make Affidavit that the legal notices and posts have been put up; that mineral has been found in place on the claim; and that the ground is unoccupied by any other person. That notice on No. (1)

post, reads as follows:—"Otek" claim: Locator John F. Reavis; Located Oct. 1-1902; "Initial Po—." Post No. Two (2) is northwesterly one thousand (1000) feet from Post No. One (1). One hundred (100) feet of this claim lies northeast and nine hundred (900) feet southwest of the line running from No. One (1) to No. Two (2) Posts. That notice on No. (2) post, reads as follows: "Otek" claim. Locator John F. Reavis: Located Oct. 1-1902. That location of this claim is as follows: Situated in Antamok Province of Benguet Luzon P. I. This claim lies north of Clay River and joins the Clay River on the south and west end. This claim shall be known as the "Otek." Located October 1st 1902.

In witness whereof I have hereunto set my hand and seal this tenth day of October One Thousand nine hundred and Two.

(Sig.) JOHN F. REAVIS. [s.]

Signed and delivered in the presence of,
WILLIAM F. PACK.

ISLAND OF LUZON,
Province of Benguet, P. I.:

Be it known, that on this tenth day of October One thousand nine hundred and Two before me, P. E. Wagar Prov. Sec'y in and for said Province personally appeared John F. Reavis above named who is to me known to be the person who executed the above Affidavit and acknowledged the same to be his free act and deed.

[SEAL.] P. E. WAGAR,
Secretary for Province of Benguet.

NOTE.—I hereby certify that on the 23rd day of May, 1904, at 9.00 A. M., the foregoing document was received in this office.

WM. M. BROWER, *Clerk.*
By L. ALMAZAN, *Deputy.*

261 After the conclusion of the trial of said case, and on the 4th day of April, 1905, the Court rendered Judgment in the above entitled cause in words and figures as follows:—

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance, Mountain Judicial District, in and for the Province of Benguet.

Causa Civil No. 4. In Chancery.

JOSÉ FIANZA ET AL., Plaintiffs,
vs.
JOHN F. REAVIS, Defendant.

Opinion and Judgment on the Mining Law of July 1, 1902.

This cause is the first one, so far as this Court is aware, wherein the mining Laws of Congress, approved July 1, 1902, have
262 been presented to the Courts of the Philippine Islands for Judicial interpretation.

Because of certain radical differences between this law, the Spanish Mining Law previously in force in these Islands, and the mining Laws generally in force in the United States, I have given this cause more than usual, perhaps more than necessary study, since in its decision sundry important questions under this new law are raised which may hereafter serve for precedents, should this case be carried, as I anticipate that it will be, to the Supreme Court of the Philippines for review. A guidance is needed both to miners and prospectors, and above all to the natives of these Islands, since this new mining law is in such important particulars so radically different from the Mining Laws to which they have been accustomed.

Mineral deposits that are "free and open to exploration, occupation and purchase, and the lands in which they are found to occupation and purchase" are strictly limited to *public lands* (Sec. 21). This constitutes the first great change in basic principles since under former laws in force in these Islands mineral deposits in *private lands were open to location and concession.*

The first step is that of exploration, a word advisedly used with reference to the term "*mineral deposits*" and not extended to lands in which they are found. As applied to lodes or veins of quartz or other rock in place this carries with it the right of possession of a tract of public land to the exclusion of all others for the purpose of exploration and without entry or declaration of any kind on the part of the prospector. This possession must be an *actual* and not a *constructive possession.* A mere staking of land, the posting of a notice or the recording of an application will not of themselves furnish the means by which such land may be held for exploration and pending the discovery and location of the vein or lode. There is no time placed in the law as a limit under which this *actual and continuous possession* for prospecting *purpecting* purposes may be continued; this is made very clear by the law. That this must necessarily be so is evident from the following provisions:

1st. *Discovery* of the vein or lode of quartz or other rock in place, *actual discovery* and not *constructive or imaginary*, must pre-
263 cede the right of the qualified entryman to make a location (See Sec. 22.)

2nd. The location of posts must be placed as nearly as possible *on the line of the ledge or vein.* (See Sec. 23), clearly indicating that not only must there be discovery of mineral bearing rock but its general course must be safely ascertained and traced prior to the perfection of an entryman's right to make a location.

3rd. As an absolute and unconditional pre-requisite to the recording of the claim located the applicant (or some one cognizant of the facts in his behalf) must make and present to the Mining Recorder with his location a sworn affidavit:

(*a*) that the legal notices and posts have been put up

(*b*) that mineral has been found in place on the claim proposed to be recorded; and,

(*c*) that the ground applied for is *unoccupied by any other person than himself* (See Secs. 28 and 29.)

It follows as a logical sequence that public lands when so held and

used, without absence of the occupant and without unreasonable delay or interruption in his labors of exploration for mineral, are as effectually withdrawn from sale and disposition or from trespass of a third party as if they were private and not public lands. The Courts must uphold and support this occupation against all comers.

When once the discovery of the vein or lode of quartz or other rock in place etc. has been made and sufficient work of development has been done thereon to enable the prospector and discoverer to intelligently trace the course and direction of the vein or lode etc., then the law permits a relaxation of the *actual* possession and the continuous and uninterrupted labor. The locator may then mark and stake his claim, present to the mining recorder his application with the necessary *prima facie* proof to entitle him to register a claim, and thereafter he may hold the claim indefinitely, subject only to the performance of a prescribed amount of annual labor and the presentation and recording, at or within certain prescribed limits of time, of the necessary affidavit of annual labor.

But the mere entry upon a tract of land, the setting and marking of location posts, the posting of legal notices, the presentation of prescribed application to the mining recorder with the affidavit prescribed, the making and filing of the affidavit of annual
264 labor within the prescribed limit of time, while *prima facie* evidence of the legality and validity of the location and the applicant's right of possession, still in the absence of the discovery or any other of the conditions named in the law, the claim is subject to a relocation and contest; these matters may be controverted and proved.

When once a claim has been properly "located" it must be recorded within thirty days of the date of location in the office of the proper mining recorder. (See Sec. 31.)

The mining recorder has no discretion as to the recording of "locations" provided only that the "application is accompanied by an affidavit" as provided in Secs. 28 and (inferentially) 29 as to Fraction claims. It is not for the mining recorder to determine whether the application is in sufficient and due form, whether another location has been made by some other person covering all or a part of the same ground. It has come to the knowledge of the Court that mining recorders have attempted to adjudicate and pass upon the regularity, legality and validity of applications presented to them for record, even going so far as to refuse to receive an application because a prior application was already recorded on the same ground etc. This is a naked usurpation of authority and jurisdiction on the part of the mining recorder, since the legality and validity of each location depends upon sundry questions of fact of which the mining recorder can have no official knowledge and the determination of which is expressly reserved to the courts of competent jurisdiction provided by law (See Sec. 37). For example, in the case at bar—the mining recorder of Benguet Province refuses to receive the application of José Fianza to record his claim, on the ground that John F. Reavis has already filed a location of the same ground. Assuming for illustration that Reavis was not actually in possession

of the land when he made and recorded his location and that Fianza was then the location and record of Reavis is null and void, and Fianza presenting his location for record within the prescribed period after location would have the better right. That is a question to be determined by the courts and not by the mining recorder. This is used in this connection only as an illustration.

The right of location of mineral deposits on the public lands and the issuance of patents therefor is confined by the mining law
265 to "Citizens of the United States or of said Islands" (The Philippines). The citizenship is not presumed, an affidavit of this fact, (Sec Sec. 35) must accompany the application for record and *without it the mining recorder may not receive or record the location; and should he do so the record and location are both null and void.* This *prima facie* proof of citizenship must be present at every stage of record from the institution of the claim by record of the location up to and including the issuance of the patent.

While forms for declarations of location affidavits, etc., are prescribed by law these exact forms are not compulsory and an application in any form that expresses all the essential requirements must be held sufficient. This is also a question of fact for the courts and not for the mining recorder; his services are ministerial only. The burden of compliance with the statutory requirements for a legal and valid location and application for record *rests solely and exclusively with the locator and applicant.* The following rule is for the guidance of the courts and not for the recorder. "In case of any dispute as to the location of a mineral claim the title to the claim shall be recognized according to the priority of *sufy* location, subject to any question as to the validity of the record itself and subject to the holder having complied with all the terms and conditions of this Act." (Sec. 32.)

The recording of a legal and valid declaration for mineral lands in an inceptions of title, and subject to subsequent compliance with the prescribed terms of the law entitles the applicant to a patent, and in the meantime withdraws the land from the list of public lands subject to exploration, occupation and purchase.

With these preliminary observations—*dicta* only— on the mining law, made not because they are materially essential in all respects in this case, but because of the differences observable therein from the practice with which the natives of these Islands have been familiar, and therefore desirable for their instruction in particular as well as all others in general, we will proceed at once to the consideration of case at bar and the determination of the issues of law and fact presented at the hearing for our decision.

It is greatly regretted by the court that counsel for both sides failed to comply with the earnest request and suggestion of the court
266 and cause to be and presented in evidence a survey and map of the disputed properties so that the court might determine the exact nature of the conflicts of lands and boundaries and at the same time have an intelligent guide to the proper understanding and interpretation of the mass of testimony taken on either side upon that matter.

For reasons unknown to the court this suggestion and request was not acted upon.

General Statement of Case.

On January 15th 1904, José Fianza and his co-owners, Bisguey, Eslan, Amey and her husband Camantales, Maria and her husband Lumagtao Alsimey and her husband Magcelino, Dahaya and her husband Joaquin, all Igorrotes, of the township of Itogon, province of Benguet, presented a petition to this court against John F. Reavis, an American, for the purpose of determining the validity of certain alleged mining locations made by the defendant Reavis at Antamoc, Benguet, and to determine the right of possession thereto as between the plaintiffs and the said Reavis, the plaintiffs claiming both the title and the right to possession of said claims as adverse claimants to the locations of the defendant.

The defendant Reavis answered, setting up his claim under the mining laws approved July 1st 1902, and also under the prior location and possession under and by virtue of the United States mining laws and the Local Customs, Rules and Regulations of miners, and the cause was heard at the Special May Term of this Court, all pleadings, proceedings and proofs being in the English language by consent and stipulation of the parties and their counsel, approved and allowed by the Court, for the reason that none of the parties to the cause used or spoke the Spanish language.

The Court having heard the testimony, examined and studied attentively the briefs of the parties subsequently furnished (the last one in November 1904) and being fully advised makes the following findings of fact.

1st. More than fifty years (exact time undetermined) prior to the commencement of this suit one Toctoc, an Igorrote, and the grandfather of José Fianza, one of the plaintiffs, was in sole and exclusive possession of certain mineral lands containing gold quartz, situated in Antamoc, of the jurisdiction of Itogon in the province of Benguet. These lands, being the same in dispute in this case,
267 were of irregular boundaries and contained about 183,000 square meters, more or less, and were situated on the slope of the mountain or hill called Antamoc Mountain and were divided into two parts by a small arroyo called Antamoc, the mine on one side being known as "Antamoc" and the other "Ampasit"; the two tracts were connected, however, and formed one tract.

These lands or mines during the life time of Toctoc were opened and developed mines and worked from year to year and after the style and manner of Igorrote miners and their customs of mining, the said Toctoc claiming the ownership of said mines and his title and ownership thereto were generally known and recognized by the people of the community and vicinity.

It is admitted that Toctoc had no paper title to said mines from the Spanish Government; that no title or concession was ever granted to Toctoc or his heirs and successors and that the plaintiffs have no such paper title thereto.

2nd On the death of Toctoc (date unknown—*but* many years ago) his son Dominguez, according to the Igorrote custom of inheritance, succeeded his father Toctoc in the possession and ownership of said mines in all respects as his father had held and claimed them and continued to so hold, claim and work them to the exclusion of any and all others, and without dispute, interference or interruption, as his father had done until the date of his death which death occurred about ten years prior to the commencement of this suit.

3rd. Upon the death of Dominguez, the plaintiff, José Fianza, and his co-plaintiffs in like manner and under the same Igorrote customs of inheritance and as heirs-at-law of the said Toctoc and Dominguez and by gifts between themselves, came into the possession of said mines under like claims of title and ownership, possessing, working and claiming them as owners, to the exclusion of any and all other claimants and without interference or adverse claims of any kind, and continued to do so up to the date of the commencement of this suit *except as hereinafter expressly found and stated.*

Like Toctoc and Dominguez the ownership of these heirs and claimants to these mines was well known and understood among the natives and residents generally of the province including the
268 Spanish officials, and generally recognized, and their possession respected.

For more than fifty years these mines were held and worked in this Igorrote family and at the time of the American occupation were well known, discovered, improved and developed mines, and had produced gold for many years and were still producing gold.

Note: While the methods of the Igorrote miners were crude and may be described as "gophering" (a term in the U. S.) or "avaricious mining" (a term under the Spanish law) yet it was the method practiced and customary among the Igorrotes and by all others operating in the province of Benguet whether Igorrotes or not. It produced gold.

4th. These gold mines have been worked annually by the plaintiffs and their ancestors Toctoc and Dominguez and produced and yielded to their said claimants and occupants a large sum of gold the amount so produced and taken from said mines by the plaintiff's herein being for the years 1901 to 1903, both inclusive as follows:

1901; the weight of 40 silver pesos.
1902; the weight of 70 silver pesos.
1903; the weight of 90 silver pesos.

Note. The Igorrote weighs and sells gold dust by the corresponding weight of a silver pesos (Spanish coin).

5th. A number of the plaintiffs live and have lived for many years either on the land of the mines themselves or immediately adjoining the mines and were charged by their co-owners with the work, care and protection of these mines and during all the times covered by the disputes that have arisen between the parties to this suit, these claimants plaintiff have been so living upon and next to the lands in dispute and holding possession thereof and working the same for themselves and their co-claimants. The plaintiffs Bisguey, Amey and Camantiles were so living and in possession of said mines

prior to the arrival of the defendant Reavis, have continued since that time to so live upon and possess the same up to the date of the commencement of this suit and without interruption save by the acts of the defendant Reavis as stated and found hereafter.

6th. In the month of — 1901, and while the said plaintiffs were in the quiet and peaceful possession of and working said
269 mines as described by the court in the 5th finding of fact herein, one Perry Imes and one H. Clay Clyde, with not to exceed four associates, all American miners and prospectors, without notice to any one save themselves, and without any general notice or invitation to miners generally in the vicinity, including the Igorrote miners resident in the district or territory, although the presence and occupation of the Igorrote miners was well known to them, held a so-called miners meeting and proceeded to form the alleged "Antamoc Mining District", to elect officers there for including a Mining Recorder, to define the limits and boundaries of the district proposed; to make enact and adopt laws, rules and regulations for the location of mining claims, the government of miners within their proposed mining district, etc., including the locating and recording of claims with the district recorder; all after the customs and manners of the miners of the United States as provided in the laws of the United States regulating and permitting such Mining Districts, and as recognized by the Congress of the United States.

The plaintiffs (or nearly all of them) were then residents of the territory or district proposed to be embraced within said mining district; they were the owners or claimants and in the actual possession of opened, worked and developed gold mines in said district; yet the plaintiffs (as Igorrote miners) had no notice of said meeting, did not attend, were not invited to do so, and took no part in the proceedings, nor does it appear that they had any notice of it. Provision was made in the bylaws of this meeting or company of American miners and prospectors for calling other and further miners' meetings and for the giving and posting of notices for such other and further meetings. A subsequent other and further meeting (and the only one) was held without notice to the Igorrotes or their attendance, without even the giving and posting of the notice adopted by themselves in their bylaws prescribing and defining how such meeting should be called. At this second (and last meeting) a resolution was adopted materially changing the boundaries of said district.

At the first meeting a recorder was elected for said mining district; in due time a book of records was provided for the recording of mining locations within the district, locations were so recorded by the American miners and prospectors in said District, of claims located by them therein, following practically the mining
270 laws and customs of the United States Laws in force in the United States and recording their notices of location with their district recorder H. Clay Clyde, in his office.

Subsequently upon request of Hon. William F. Pack, Governor of the Province of Benguet (by what authority it does not appear

nor is it or the date of it important) these records of the so called Antamoc Mining District were turned over to Governor Pack and deposited by him in the office archives of the Province of Benguet where the have since remained.

7th. In the month of March, 1901, the defendant John F. Reavis entered upon the lands embraced in and next to the mines of the said plaintiffs and upon the alleged information (see subsequent findings) that said mines of the plaintiffs had been located under the Spanish mining laws by one Hans Holman in the year 1896 and that said lands and mines were abandoned by said Hans Holman and were vacant mineral and public lands, proceeded to stake and locate these claims under the mining laws in force in the United States and including the mines of the plaintiffs which claims were named by the said Reavis respectively the "Otek," the "Texas" and the "Clayton" and were recorded by the said John F. Reavis in the office of H. Clay Clyde, as the Mining Recorder for the Antamoc Mining District, as previously defined in these findings.

8th. The plaintiff José Fianza on behalf of himself and coclaimants immediately thereafter protested against the placing of defendant Reavis' stakes upon said mines and presented a formal protest to Hon. H. P. Whitmarsh, the then Governor of Benguet, which protest was made known to the defendant Reavis; the occupation of Reavis was protested by Fianza to Reavis himself and the said Reavis maintained his stakes on the plaintiffs' mines and claims by means of threats of sending the plaintiff Fianza to Bilibid in case he removed the stakes and by declarations that the Igorrotes had no right to hold and own mines both of which statements were wholly and completely false and untrue and without right or justification in fact. There is some other evidence of other threats made to Bisguey, one of the plaintiffs in the actual possession of the mines when Reavis entered and set his stakes thereon. For which defendant Reavis offers to the Court an explanation that seems reasonable and satisfactory and in so found.

271 9th. In May 1902 the plaintiff José Fianza again made a formal protest to Hon. William F. Pack, Governor of Benguet Province of the trespass and usurpation of the said Reavis upon the mines of himself and his co-plaintiffs and the defendant Reavis with the said plaintiff Fianza appeared before the said Governor and submitted to the said Governor their differences as an arbitrator (without formal or legal appointment as such) and as the result of the offices of the Governor it was mutually agreed that the said defendant John F. Reavis would not interfere with the actual possession of the said plaintiffs and their working of their mines and that the plaintiffs should not prevent the said defendant Reavis from coming upon said lands from time to time for the purpose of doing assessment work and that this should continue until the questions of dispute between them could be submitted to the Court of First Instance for decision, which agreement was observed between these parties up to the date of commencement of this suit, which suit was commenced by the plaintiffs in accordance with such agreement.

10th. Within a few days thereafter and before July 1st, 1902, the plaintiffs caused the boundaries of the plaintiffs' claims and mines to be distinctly marked by substantial posts and monuments. A dispute exists in the proofs as to when the plaintiff Fianza set the 14 stakes that mark the boundaries of plaintiffs' claims, the defendant Reavis alleging that they were set after the commencement of this suit. The Court finds from the proofs that these posts were set and placed by the plaintiffs in the year 1902 and prior to the locations under which the Defendant Reavis now claims.

11th. Directly after the arbitration before Governor Pack in May 1902, and the agreement that was then made and entered into between these parties the plaintiffs moved a camarine which had long been used by the plaintiffs in their mining operations a short space or distance placing it within the boundaries of plaintiffs' claims as staked and marked, and repaired it for use. At the same time the plaintiffs posted up a conspicuous wood sign on the outside of the camarine with these words printed and cut into the wood, viz:

Rancho de José Fianza por su Minas de Oro Denominados Antamoc y Ampasit.

272 and thus giving notice to the world of the claim of ownership of *this* said plaintiffs. Reavis entered upon the lands a few days thereafter, took possession of and occupied the camarine of the plaintiffs, removed and broke up the plaintiffs' sign, and for the reason, as he alleged, that he wanted plaintiffs to know that he had been there and to bring the law suit to a head. All this occurred before the first day of July 1902.

12th. On October 1st and 3rd 1902, the defendant John F. Reavis, without previous notice to the plaintiffs and without their knowledge and consent, proceeded to make, and on October 10 1902, caused to be recorded in the office of the Provincial Secretary of Benguet three several declarations for claims or mines and named by him "Otek," "Clayton" and "Texas," covering the same grounds as his three previous attempts to locate under the United States mining law the complete records of which are in the words and figures following, to wit:

"Location Notice."

OCTOBER 1ST, 1902.

"This certifies that the undersigned citizen of the United States of America having complied with "Local Customs regulations &c. and with the Laws of the United States (see note with diagram) and with the Laws enacted by Congress March 1902 *I*ntitled an act to Provide Temporarily for Conditions in the Philippine Islands—has this day located and claim- 1000 Linear feet along a Quartz lode bearing gold and 1000 feet in width; situated in "Antamok" Province of Benguet; Island of Luzon, P. I., the name of claim to be "Texas" and fully described as follows.—Laying north of the

Clay River and near the Sitio of "Antamok" and laying on a quartz lead run-ing in a North west and South east direction joining the river at the South west corner about 500 feet more or less below the crossing of the trail leading to "Gomok" from "Antamok."

Located Oct. 1st 1902.

Locator, JOHN F. REAVIS.

Recorded Oct. 10 1902 at 9:45 a. m.
P. E. WAGER,
Prov. Sec'y.

(Over.)

Diagram of Claim known as "Texas."

273 *Note.*

This claim was located and filed for record March 23, 1901, 10:30 A. M., Book 1, page 14—in Antamok Mining District—Pery Innes Dpt. Recorder, and sufficient work has been done to insure me a patent under the U. S. Mining Laws under which I located and worked in good faith complying with every particular thereof.

JOHN F. REAVIS.

(Plat immediately follows—see next page.)

Initial Post No. 1 "Texas" quartz claim bearing gold. Located Oct. 1, 1902. Locator John F. Reavis. Direction of Post No. 2 Northwest 1000 Linear feet. Number of feet laying northeast of line from post number two to post number *one* 100, number of feet lying Southeast of line, 900. See discovery 100 feet northwest of this (Post No. 1).

Located Oct. 1, 1902.

Locator, JOHN F. REAVIS.

Attest:
H. CLAY CLYDE.
H. P. WHITMARSH.

(Endorsement in red ink on margin as follows:)
"Texas."
Located by John F. Reavis.
Located Oct. 1, 1902; Recorded Oct. 10, 1902 at 9:45 A. M.

Know all men by these presents, that I, John F. Reavis of Antamok Province of Benguet, Luzon, P. I., Citizen of the United States and over 21 years of age do hereby locate and claim for mining purposes one thousand (1000) feet in length by one thousand (1000) feet in width on this mineral bearing claim described in the following—Hereby make affidavit that the legal notices and posts have been put up; that mineral has been found in place on the claim; and that the ground in unoccupied by any other person.

That notice on No. 1 post reads as follows: "Texas" Claim; Locator John F. Reavis; Located Oct. 1—1902. "Initial Post"; Post No. 2 is

Northwesterly one thousand (1000) feet from Post No. 1; one hundred feet of this claim lies northeast and nine hundred (900) feet southwest of the line running from No. 1 to No. two (2) posts.

That notice on No. (2) post reads as follows: "Texas" Claim; Locator John F. Reavis; Located Oct. 1—1902.

274 That location of this claim is as follows: Situated in Antamok Province of Benguet, Luzon, P. I., Lying north of Clay River and near the *sitos* of Antamok. This claim shall be known as the "Texas." Located Oct. 1—1902.

In witness whereof I have hereunto set my hand and seal this tenth day of October One Thousand nine hundred and Two.

(Sig.) JOHN F. REAVIS (S).

Signed and delivered in the presence of

WILLIAM F. PACK.

ISLAND OF LUZON,
Province of Benguet, P. I.:

Be it known, that on this tenth day of October one thousand nine hundred and two before me P. E. Wager, Prov. Sec'ty in and for said Province personally appeared John F. Reavis above named who is to me known to be the person who executed the above affidavit and acknowledged the same to be his free act and deed.

P. E. WAGER.
Secretary for Province of Benguet."

[With Seal.]

Location Notice.

OCT. 3, 1902.

"This certifies that the undersigned citizen of the United States of America having complied with "Local Customs, Laws and regulations and with the Laws of the United States (see note with diagram) and with the Laws as enacted by Congress March 1902 *intitled and* Act to Provide Temporarily for conditions in the Philippine Islands, has this day located and claim- 1000 linear feet along a quartz lode bearing gold and 1000 feet in width; located in Antamok Province of Benguet, Island of Luzon, P. I., the name of claim to be "Clayton" and being described as follows: *laying* north of the Clay River and near the sitio of Antamok and *laying* on a quartz lode running in a Northwest, and Southeast direction joining the "Texas" on Southwest, the "Bagio" Southeast and the "Antamok" on the Northwest.

Located Oct. 3, 1902.

Locator, JOHN F. REAVIS.

Recorded Oct. 10, 1902, at 10:20 A. M.

P. E. WAGER,
Prov. Sec'y.

275 (And on the back of this notice is the following:)

NOTE.—This claim was located some time in March 1901 and I have over more than 200 feet of tunneling on the claim.

Relocator, JOHN F. REAVIS.

Plat.

Initial Post No. 1 "Clayton."
Locator, John F. Reavis. Located Oct. 3, 1902.
Direction of Post No. 2 Northwest. Number of feet lying northwest of line 500, number of feet lying southwest of line 500, line running from this Post 1000 linear feet in Northwest direction. See discovery at this post—quartz gold.
Located Oct. 3, 1902.

Locator, JOHN F. REAVIS.

Attest:

H. CLAY CLYDE.
H. P. WHITMARSH.

"Know all men by these presents, that — John F. Reavis of Antamok, Province of Benguet, Luzon, P. I., Citizen of the United States and over 21 years of age do hereby locate and claim for mining purposes one thousand (1000) feet in length by one thousand (1000) feet in width on this mineral bearing claim described in the following.

Hereby make affidavit that the legal notices and posts have been put up, that mineral has been found in place on the claim, and that the ground is unoccupied by any other person.

That notice — No. 1 post reads as follows: "Clayton" Claim locator John F. Reavis; located Oct. 1, 1902, "Initial Post" Post No. 2 is northwest one thousand (1000) feet from Post No. 1; one hundred feet of this claim *lays* Northwest and nine hundred (900) feet Southwest of line running from No. one (1) to No. two (2) posts.

That notice on No. 2 post reads as follows: "Locator John F. Reavis, Located Oct. 1, 1902."

That location of this claim is as follows: Situated in Antamoc Province of Benguet, Luzon, P. I., *laying* north of Clay River and near the Sitio of Antamoc *laying* on a quartz lode running in a Northwest and Southeast — and joins the "Texas" on Southwest, the "Baguio" Southeast, and the "Antamoc" on the Northwest.

This claim shall be known as the "Clayton" located Octo-
276 ber 1, 1902.

In witness whereof I have hereunto set my hand and seal this tenth day of October One thousand nine hundred and two.

(Sig.) JOHN F. REAVIS (S).

Signed and delivered in the presence of

WILLIAM F. PACK.

ISLAND OF LUZON,
Province of Benguet, P. I.:

Be it known that on this tenth day of October one thousand nine hundred and two before me P. E. Wager, Prov. Sec'y in and for the said Province personally appeared John F. Reavis above named who is to me known to be the person who executed the above affidavit and acknowledged the same to be his free act and deed.

[SEAL.] P. E. WAGER,
Secretary for Province of Benguet."

Location Notice.

OCT. 1, 1902.

Notice is hereby given that the undersigned citizen of the United States of America having complied with "Local Customs regulations etc. and with the Laws of the United States (See note with diagram) and with the Laws enacted by Congress March 1902, "Intitled an Act to Provide Temporarily for Conditions in the Philippine Islands," *have* this day located and claim- 1000 linear feet along a quartz lode bearing gold and 1000 feet in width situated in "Antamoc" Province of Benguet, Island of Luzon, P. I. The name of claim to be "Otek" and fully described as follows.

Laying North of Clay River and laying at Sitio of "Antamok" and along a quartz lode bearing gold and other metals, the lode running in a Northwest and Southwest direction joining the River on the South and West and joining the "Texas" northeast, and the trail going from Bua to Gomok and Etogon passes over the claim north and south.

Located Oct. 1, 1902.

Locator, JOHN F. REAVIS.

Attest:
H. CLAY CLYDE.
H. P. WHITMARSH.

Recorded Oct. 10—1902 at 10:00 A. M.
P. E. WAGER,
Prov. Sec'y.

277 (On the back of this sheet is found the following writing together with the plat—see lower part of this page for this matter.)

NOTE.—This claim has been held and worked under the United States Laws since located Feb. 1901 by me and I have lived on this claim since that date.

Locator JOHN F. REAVIS.

Plat.

Innitial Post No. 1 "Otek" Quartz Claim Number One Locator John F. Reavis.

Post No. 2 is 1000 feet linear along this quartz lead 100 feet lays Northeast of a line from Post No. 1 to Post No. 2 and 900 feet lays

Southwest of the line.—Provided—That the Southwest line shall comply with the meanderings of the river bank south and west including bed of river and there be a full claim, otherwise this shall be a fraction of a claim known as Otek, discovery north of No. 1 pose across the River about 100 feet.

(Memorandum in red ink on the margin says as follows:)

"Otek"

Located by John F. Reavis.

Located Oct. 1, 1002.

Recorded Oct. 10, 1902 at 10:00 A. M.

Know all men by these presents: That I John F. Reavis of Antamok, Province of Benguet, Luzon, P. I., Citizen of the United States and over (21) years of age do hereby locate and claim for mining purposes One thousand (1000) in length by One Thousand (1000) feet in width on this mineral bearing claim described in the following—hereby make affidavit that the legal notices and posts have been put up; that mineral has been found in place on the claim; and that the ground is unoccupied by any other person.

That notice on No. (1) post reads as follows: "Otek" Claim. Locator John F. Reavis; Located Oct. 1, 1902; "Initial Post" Post No. 2 is northwesterly One thousand (1000) feet from Post No. 1. One hundred (100) feet of this claim lies northeast and Nine hundred (900) feet southwest of the line running from No. One (1) to No. two (2) post.

That notice on No. 2 post reads as follows: "Otek" Claim.
278 Locator John F. Reavis; Located Oct. 1, 1902.

That location of this claim is as follows: Situated in Antamok Province of Benguet, Luzon, P. I., this claim lies north of Clay River in joins the Clay River on the south and west end. This claim shall be known as the "Otek" Located October 1st, 1902:

In witness whereof I have hereunto set my hand and seal this tenth day of October One thousand nine hundred and Two.

(Sig.) JOHN F. REAVIS. [s.]

Signed and delivered in the presence of
WILLIAM F. PACK.

ISLAND OF LUZON.
Province of Benguet, P. I.:

Be it known, that on this tenth day of October One thousand nine hundred and Two before me P. E. Wager prov. Secy. in and for said Province personally appeared John F. Reavis above named who is to me known to be the person who executed the above affidavit and acknowledged the same to be his free act and deed.

[SEAL.] P. E. WAGER,
Secretary of Province of Benguet.

(On back of this set appears the following unsigned memorandum:) "Otek" Locator John F. Reavis.

Located Oct. 1st 1902. Recorded Oct. 10, 1903, at 10.00 A. M.

NOTE.—The defendant Reavis produced two witnesses to prove

that the lands claimed by the plaintiffs had been located or denounced under the Spanish Mining Laws, once by Vicente Carrera for his uncle Augustin Illera, in the year 1895, and once by Hans Holman in the same year 1896. If true the burden of establishing these locations rested upon the defendant of course and might possibly materially affect other issues presented by the evidence. As to this the court finds:—

13th. That neither of these alleged denouncements were in fact made during the year 1896 nor at any other time. That no denouncements were in fact made during the year 1896 nor at any other time. That no denouncement location or entry of the lands described in the plaintiffs' petition in this cause have ever been made, so far as the evidence before this court shows either by Carrera for Illera, by Hans Holman, or by any other person or persons under
279 the Spanish Mining laws in force in these Islands at any time.

14th. The Court finds that the defendant John F. Reavis entered upon the mines owned and claimed by the plaintiffs in the year 1901, and staked out his three claims thereon under the honest (though mistaken) belief that the same was included in an abandoned and forfeited Spanish grant of one Hans Holman and that at the time of his first entry thereon and the setting of his stakes he had no actual knowledge that the Igorrotes who were then living upon the lands claimed the ownership of said mines.

15th. That the said defendant John F. Reavis, within a few days of the time of his first entry upon and staking of the said mines, received notice of the plaintiffs' claim of ownership and before he had expended any considerable amount of either time, labor or money thereon. This notice was served upon him by Fianza at various and sundry times thereafter during the years 1901 and 1902, and when he made his locations and filed his declarations under which he now claims, he had full knowledge of the claims of ownership of the plaintiffs and that the said plaintiffs were at that date and for a long time prior thereto and before the passing and approval of the act of Congress of July 1st 1902, in the actual possession of and working said mines.

16th. Up to the month of May 1902 the defendant John F. Reavis was not in the actual and continuous possession of the lands embraced in his attempted locations under the U. S. Mining Laws. His only possession was when he entered thereon from time to time to do assessment and development work, and his possession for such purposes was maintained by threats and intimidation and against the protest of the plaintiffs.

17th. In May 1902 the defendant John F. Reavis entered into an agreement with José Fianza the plaintiff that thereafter he would not disturb the plaintiffs in their actual possession and working of their said mines, and that he would not thereafter enter upon said lands nor disturb the possession and working of the plaintiffs except for the purpose of doing annual assessment work, until such time as the Courts should decide the rights between them. This agreement was kept and observed by the defendant Reavis until October 1st 1902.

280 *Decision and Opinion of the Court—the Facts Proved.*

That facts proved in this case as contained in the previous of the findings of this court, fortunately, are clear, specific and definite in all respects save one: That one exception relates to the exact boundary lines of the opposing claimants with reference to their relations to each other. Each claimant's boundary lines by themselves are certain and sufficiently well defined to enable a mineral surveyor to locate them on the ground from the record and descriptions furnished alone, provided, of course, the stakes are kept up and maintained by the several claimants; but neither of these are so defined or described in the proofs as to enable the court to decide that which a mineral survey would easily and certainly establish and show, namely, the exact extent and condition of the conflict between the two tracts of land. Only one thing appears certain and sure that all or nearly all of the three locations of Reavis are embraced within the claim of the plaintiffs.

For the purposes of this case this is sufficient although by no means as satisfactory as it would be both to the Court and the parties in interest had the survey of the claims been made by a competent surveyor and the claims platted together on one map, which the court requested might be done. In this one important feature of the preparation and presentation of their cases to this court both parties have been equally negligent and consequently no advantage thereunder accrues to either.

The court will consider the claims of the parties to the land in their order. The rights of the plaintiffs therefore are to be first considered. The first question presented by the plaintiffs is that of

Prescription.

This court finds itself relieved at the outstart of any doubt whatever as to the decision of a right of the plaintiffs to ownership of these mineral lands and the possession of a title thereto gained by prescription as against the Crown under the Spanish sovereignty in these Islands. No title of such a nature and no right of possession to the lands in question was or could have been gained by the plaintiffs.

With the advent of the Spanish, one of the first subjects to which their attention was directed was the mineral resources. The
281 laws and decrees of Spain upon the subject of Mines in their several Colonies have ever announced, and without variation or doubt of any kind have declared that all mines and minerals were the property of the Crown and such were reserved.

Historically the special laws applicable to mineral and mineral lands commenced in the Philippines with the "Code of 1846," decreed by the Superior Civil Government in these Islands, and thereafter confirmed by the Supreme Government, and which became effective in these Islands on the 29th day of January, 1846, and remained in force up to the 14th day of May 1867, when the "Code of

1867" went into effect and so remained up to the date of the ratification of the Treaty of Paris in 1899.

See the Coal Measures of the Philippines p. 10-11.
Abstract of Mining Laws pp. 143 and 159.

NOTE.—The two volumes referred to were published by the United States Government and the Government of the Philippine Islands, respectively, in 1901 and 1902. They are official publications and were written while the author (now presiding as Judge of this Court) was discharging the duties of Chief of the Mining Bureau. They relate to the Spanish Mining Laws in force in these Islands and the history of Mining as disclosed by Spanish Archives.

The first article of the "Code of 1846" reads as follows:

"Article 1. Inasmuch as the supreme control of the mines of the whole Kingdom belongs to the Crown and the Royal Señory, no one shall have the right to exploit them, except those who have obtained it by special concession of this Supreme Government, and those who hereafter obtain it, in accordance with this Regulation."

Abstract of the Mining Laws p. 143.

But this is by no means the first declaration and provision applicable to the Philippine Islands and to the same tenor and effect. Going back to the Ordinances of May 22, 1783, (Spain) we find Article 1, Title V, reading as follows:—

"Article 1. Mines are the property of my royal Crown as well by their nature and origin as by their reunion declared by law."

(See U. S. *vs.* Castillero 67 U. S. 2.

The "Code of 1867" again announces this doctrine as to the
282 mines in the Philippines in articles 1 and 2, as follows:—

"Article 1. Precious stones, and all substances metal-ic in their nature, combustibles, salts, phosphates of -ime, whether found upon the surface or beneath the ground, and whatever may be their state, whether solid, liquid or gaseous, are substances to which the mining industry applies."

Article 2. The State is the proprietor of the substances designated in the preceding article, and no one can deal with them the same without a concession by the Superior Civil Government granted."

(Abstract of the Mining Laws p. 159.)

And this provision is further elaborated in article 1 of the Regulations for the enforcement of said "Code of 1867," which is, in part, as follows:—

"Article 1. The special objects of the mining industry are all those inorganic substances enumerated in the Royal Decree, whether said substances are in lodes or strata, pockets or in any manner of laying, provided their exploitation require working and surface or underground operation that can be qualified *a as* mining industry pursued in compliance with the rules of the art."

(Abstract of the Mining Laws p. 178.)

These quotations might be greatly extended but the tenor and effect of these are all the same. Mines and minerals have always been the property of the Crown of Spain, and as will be seen under the next title, the right to work the mines and to take therefrom the minerals therein in any other manner than the mode strictly provided by law and under Royal license has been jealously guarded, safe-guarded and protected by the State.

No doctrine of presumptive grant, a grant that had been lost, in the lapse of time could be invoked against the crown; no number of years of actual quiet and peaceable occupation, and working of mines without royal concession, grant or title, served to establish any right or title whatever to the Mines, in their possessors; the mines and the minerals were the reserved property of the Crown.

The plaintiffs in this case, during the entire time of the occupancy of these Islands by Spain, and up to the day of the transfer of sovereignty to the United States (April 11, 1899) did not gain,
283 nor could they gain, under the laws in force any right title or interest to the mines in question nor to the minerals therein by virtue of their possession and working of the same. The doctrine of prescription as against the Crown never applied to the mineral lands of the Philippine Islands.

Title by Royal Grant or Concession.

There is no claim that the plaintiffs in this case have ever had or claimed these lands in their possession or that they have ever worked them under a Royal grant or concession from the Crown of Spain. But inasmuch as this question becomes material in the consideration of alleged denouncements and concessions of these lands to others the subject will be treated here for the purposes of historical sequence only.

Going back to the Ordinance of May 22, 1782, (and without quoting or referring to the laws intervening between 1783 and 1846 when the Code of 1846 was adopted for these Islands; all of which intervening legislation is in harmony with these rules and regulations so far as royal grants and concessions for mining are concerned) it has already been seen that the Crown reserved the ownership of all minerals not only in Spain but throughout the whole Kingdom including its Colonies.

Article 2 of Title V (following Article 1 quoted *supra*) of the Ordinances of May 22, 1783, made the following provision as to the working of these lands:

"Article 2. Title V. Without separating them from the royal patrimony I grant them to my subjects in property and possession in such manner that they may sell, pass them by will, either in the way of inheritance or legacy or in any other manner alienate the right which in the mines belongs to them, on the same terms in which they themselves possess it and to persons capable of acquiring it."

As expressive of the interpretation placed upon these provisions the Court takes the decision of the Supreme Court of the United States in *U. S. vs. Castillero*, (1862) 67 U. S. 2. This case had to do with

the Andreas Castillero quicksilver mines in what is now Santa Clara country, California, and it originated under the Act of Congress of March 3, 1851, entitled "An Act to ascertain and settle the private land claims in that State (California)."

Andréas Castillero, a Spaniard, discovered in 1845 a min-
284 eral bearing rock in the jurisdiction of the municipality of San José Guadalupe (Santa Clara Country, Cal.) and on November 23, 1845, he presented a petition to the Alcalde of said pueblo, alleging discovery and claiming the right to concession of the lands embraced in his discovery for silver and gold.

On December 3rd 1845, he amended his petition to include quicksilver.

On December 30th 1845, the Alcalde (having juridical functions) issued to Castillero a receipt therefor.

May 14th 1846, a confirmation of his claim for a grant to his discovery based upon the action of the Alcade of San José Guadalupe was recommended by the Government Mining Bureau at the City of Mexico.

May 20, 1846, the approval of the Juana de Fomento etc. was secured; and,

May 23, 1846, the Minister of Relations issued an order of confirmation to the Governor of California.

However, on May 13, 1846, and on the day before the recommendation of the Mining Bureau was endorsed upon the claim of Castillero, Congress recognized the existence of war between México and the United States; and on July 7, 1846, the official functions of Mexican officials in the department of California ceased; after that date civil officers during the war were such as were appointed by our Military Commanders.

The formalities of perfecting and recording the grant in California were thus interrupted by the war, and the sovereignty of Mexico passed to the United States without further progress in the perfection of the grant. Castillero, however, remained in possession and by himself and grantees, lessees, etc., the mines were worked and became very valuable. In 1861 after many years of delay the District Court of California decreed the confirmation of the grant. It was taken to the Supreme Court of the United States, which court reversed the finding of the lower court and decreed the non-confirmation of the grant and in the decision of the Court the entire question of grants under the Ordinance of Spain of May 22, 1783, was discussed. The Court says:

"Ownership of a mine, however, as secured under the Mining Ordinances by registry and judicial possession does not consist alone in the right to take from the soil the mineral therein to be found,
285 but it also embraces if necessary to the working of the mine a right to the exclusive possession and use of the surface land for an indefinite period within the boundaries of the pertenencias appertaining to the mining right or privilege.

Such rights are by law regarded as severed from private land and also from public land when granted by the usual forms of conveyances for agricultural or other ordinary purposes. Gamboa, by

Heathfield p. 132 Sec. 5. *Rights to a mine not registered can only be acquired from the sovereign power.* and it is true, as contended by the United States, that the forms of such conveyance are wholly distinct from those employed in the ordinary process of grantings lands". pp. 166, 167."

"*Property in mines not discovered and registered according to law, whether the mine was on public or private lands, was vested, as has already appeared, exclusively in the Supreme Government, so that private persons could not acquire it or any interest in it in any other mode than that prescribed in the provisions of the Mining Ordinances.*" *p. 169*".

"Strict compliance with the law is required, as appears by all the writers upon the subject, and the 13th article of Titly XIX provides in effect that the regulations shall be executed with the greatest exactness precisely as they are written and intended. Halleck Coll. p. 307 Rock p. 110 Thompson on Mines 183."

"Properly speaking, says Gamboa, the register is the book in which deeds and grants are entered for perpetual remembrance thereof, so that if they be lost, torn or defaced, or if any question be raised as to their identity or authenticity, recourse may be had to such book.

Registry, says the same author, is the basis of a title to a mine, and the attributive cause of the subject's right of property in it; the Crown having subjected the proprietor to this obligation when he made the mines common so that no mine can be lawfully worked until registry is made, without which it is liable to be registered by any other person; the form of the ordinance not having been contilied with. Although that commentary was written before the date of the Ordinance which must furnish the guide on this case, still the views of the writer have an important bearing upon the questions presented, as showing the universality of the rule *that not even the discoverer can acquire title to a mine without registry.*

Gamboa pp. 143 145 p/171".

286 Now turning to the Philippines we learn that the mining industry in these islands up to 1844 went without direction or interference with only a vague decree of King Philip specially referring thereto, although the Ordinances of 1783 (and subsequent laws) might have been applied *and all of which called for registry.* A law of special application was deemed essential and of this the Royal Inspector of Mines in the Philippines, Señor Baranda in that year said:

"It seems incredible that, notwithstanding it is now more than three centuries since the Philippines were discovered, their mineral wealth is yet unknown. However nothing is more certain," also

"The greatest obstacle that exists in this day in order that there may be a resolution to develop the mining industry is the lack of a law.—It falls then to the lot of the Government alone to remove the obstacle which the non-existence of some law presents."

(See Coal Measures of the Philippines p. 10.)

The Code of 1846 was the result. To this Code then we must turn for the essentials in procedure by which the Crown conceded

any of its rights reserved in mines and minerals in these Islands.

Article 8 of this Code extends to a very large class the privilege of prospecting in order to discover and acquire mineral veins; it includes. "Every Spaniard, every stranger naturalized or established in these Islands with the necessary permission, every Indian meztizo and Chinaman." (Abstract Mining Laws p. 143). Language could not be more comprehensive; it undoubtedly included the Igorrotes.

Article 5 to 9, inclusive prescribe the procedure, which will not be here quoted at len-th, only abstracted. The full text will be found in

Abstract of the Mining Laws pp. 143 and 144.

Written application must be made to the provincial official designated as the mining registrar.

The mining registrar shall note upon the margin the day and hour of its presentation and forward it to the next superior officer, the Department Inspector.

Within ten days thereafter the claimant must designate (in writing) the situation of his claim to the vein.

Within ninety days he must sink a shaft or make an excavation at least ten Spanish yards deep.

287 The Inspector (local) shall then appoint a day when he will make an inspection of the work by himself or subordinate and *the Inspector shall proceed to mark off the claim, fix and place the stakes and formally put the claimant in possession.*

All of this being done the Superior Government shall give to the claimant a certificate which shall serve as a title to the mine.

By this Code the pertenencias shall be 200 yards long and a half of that in width and shall be a right angled parallelogram, in form.

Then came the Code of 1867 (May 14, 1867) which repealed the Code of 1846.

Consulting this Code in like manner we learn that the persons who might denounce mining claims remained the same as in the Code of 1846, viz: Spaniards, naturalized foreigners, persons established in the islands with the necessary permission, Indians, mestizos and Chinamen.

(Abstract of the Mining Laws p. 13-)

That the size of claims (with right angles) should be for gold etc. 300 by 200 meters.

(Abstract of the Mining Laws. p. 18-)

That private persons and companies might obtain as many claims as they might deem convenient, provided.

(*a*) Not more than two for one person may be asked in a single petition*er*.

(*b*) Four for a company,

(*c*) Double that amount for certain classes, and,

(*d*) Larger groups under prescribed conditions.

(Abstract of the Mining Laws. p. 22.)

Chapter IV prescribes the procedure for location; these are as follows:

Art. 21. The locator presents written petition to the Governor or Alcalde for permission to register a mine. This petition must be accompanied by a description of the mine or claim and within 20 days thereafter the locator must present to the Governor or Alcalde a certificate signed by the gobernadorcillo that he (the gobernadorcillo) has set perceptible marks (stakes and monuments around the proposed claim. (Abstract of the Mining Law pp. 25 and 26.)

Art. 22. The Governor or Alcalde shall

(*a*) Number the petition.

288 (*b*) Note on the petition and in a stub book the day and hour of presentation.

(*c*) Require the record to be signed by the locator.

(*d*) Issue his receipt, countersigned by the Secretary, showing the number and order of the petition.

(Abstract of the Mining Law p. 27-)

Art. 23. The Governors then orders the petition to be published within three days in the Official Gazette of the province; and that it be sent to the alcalde or inferior authority to be posted as notices. This notice is a written notice. It is posted on the provincial bulletin board. It is posted in two other prominent places in the province. It is cried in the native dialect as a bandillo in the locality of the claim; giving notice to all to appear and present adverse claims. (Abstract of the Mining Laws. p. 30.)

Art. 24. Sixty days is given to present adverse claims and within twenty days thereafter the Governor or Alcalde decides oppositions (subject to the right of appeal to the Superior Government). These appeals (Art. 26) must be taken within thirty days (Abstract of the Mining Laws- p. 31).

Art. 28. Within four months the locator must develope his claim by legal labor to the extent of ten meters of work- (Abstract of the Mining Laws- p. 32.)

Chapter V. provides that within four months after the presentation of his registry the locator shall apply (in writing) for demarcation and survey furnishing a sample of the minerals. The papers are then sent to the Mining Bureau at Manila (Inspecsion General de Minas) and the survey is made within six months. (Abstract of the Mining Laws p. 34 *et seq.*) and title, if found in conformity with law in the main proceedings, is then issued in the form of a written concession by the Governor General.

These main proceedings are thus defined:

(1) Admission of petition.

(2) Publication of description.

(3) Permission or refusal of commencing work (evidenced by the receipt of the Alcalde.)

(4) Notice of the permission of the owner (if on private ground instead of Royal domain).

(5) Presentation of certificate of the marketings of the claim with mounds etc., signed by the gobernadorcillo.

(6) (Notice of the prospecting work required by law (10

289 meters) and of the examination and formal staking of the ground and delivery of possession by the Governor or Alcalde.

(7) Filing of the record (including report of demarcation and survey by Mining Bureau) with the Superior Governor, etc.

(8) Granting and issuance of the concession.

Abstract of the Mining Laws p. 28.

In view of the fact that not only are all these proceedings a matter of record in the office of the provincial governor or alcalde but also in the office of the Mining Bureau at Manila, the office of the Direccion Civil at Manila and the office of the Governor General (Secretary's Office); and that without all of these essentials a locator gains no right or title or interest of any kind in mineral lands in the Philippines; that these laws remained in full force up to the date of the Treaty of Paris; that claims were all right angled parallelograms in form; it is needless to say that the plaintiffs in this case have no royal grant or concession good and valid in law under the Spanish Government and never have had. In fact they do not claim it *it* and if claimed upon the evidence presented to this court it could not and would not be allowed.

Status of These Fianza Mines.

(Under the Treaty of Paris.)

The lands in question were mineral lands, the proof as to this is unquestioned. It has been seen that notwithstanding the long years of uninterrupted possession of Fianza and his ancestors and the working without interruption of time of the said mines for many years, fifty and probably many more than that, they had never complied with a single law as to its registration, (nor had their ancestors) and consequently they had no "property" whatever therein. The Ordinances and the Codes during all the time covered by this possession and working required registration as a condition prerequisite to any title or right of any kind as against the Crown. It was then Crown lands and as such passed to the Government of the United States and the title thereto became vested in the Congress of the United States, and the title of the United States thereafter could not be divested in any manner except as Congress should provide. Fianza and his coclaimants had no interests in
290 these mines that Spain recognized and none that the United States was under obligation either in law or in equity to recognize or respect. They were trespassers as against both governments, before and after the treaty, and under Spanish sovereignty at least this trespass was a criminal one. Spain and its officers, so far as the evidence shows, did not interfere with him; it even seems that they winked at it and even connived at the unlawful acts of Fianza's ancestors; but that does not help the status of the native miners; they were trespassers and could gain no rights thereby.

April 11, 1899 to July 1, 1902.

Mining Laws in Force in the Philippines.

On April 11, 1899, the sovereignty of these Islands passed to the United States by virtue of the provisions of the treaty of Paris. July 1st 1902 Congress passed the so-called "Philippines Bill" making provision for the acquirement of titles to mines and mineral lands within these Islands.

What mining Law was in force in these Islands between these two dates?

For the purpose of this case this question is easily answered. Clearly it was the United States Mining Laws in force in the United States, or else it was the Mining Laws of Spain applicable to these Islands and the mineral lands therein prior to the treaty. This Court does not hesitate to declare that it was neither the one nor the other. The United States Mining Laws had not been extended by Act of Congress and nothing less than that would serve to so extend them. The Mining Laws of Spain were not in force because first, Congress had not ratified and extended them, and second, the Government of occupation and the Civil Government that succeeded it furnished no machinery sufficient to make if operative.

But the only question material to *h*is issue and case is the ascertainment which, if either of these two laws was in force in these Islands during the interregnum The answer is "The Spanish Mining Laws."

The Court bases its decision upon this question upon the following authority:

The Supreme Court of the United States has said:

291 "This government put itself in place of the foreign sovereign and became vested with all their rights subject to their concomitant obligations to the inhabitants; both were regulated by the law of nations according to which the rights of property are protected, even in cases of conquered country, and help sacred and inviolable if it is ceded by treat*h* with or without any treaty to such effect. *And the laws whether in writing or evidenced by the usage and custom of the conquered or ceded country continue in force until altered by the new sovereign.*

Stother *vs.* Lucas (1838) 12 Peters 436.

Citing

Johnson *et al.* Lessee *vs.* McIntosh 8 Wheaton 589.
Harcourt *et al. vs.* Gaillard *et al.* 12 Wheaton 528.
Henderson *vs.* Poindexter's Lessee 12 Wheaton 535.
United States *vs.* Percheman 7 Peters 86-87.
United States *vs.* Clarke, 8 Peters 444.
United States *vs.* Clarke 8 Peters 465.
Delassus *vs.* United States 9 Peters 133.
Mitchell *et al. vs.* United States 9 Peters 734, 747, 748, & 749.
United States *vs.* Fernandez *et al.* 10 Peters 305.
Smith *vs.* United States 10 Peters 330.
Mayor &c. New Orleans *vs.* U. S. 10 Peters 721 &c.

As neither the plaintiffs or the defendants have presented any proof of any location made under the Spanish Mining Laws during the interregnum named when these laws, if any, were in force in these Islands it is of course not possible for the plaintiffs to claim any righ- thereunder and they have none; their possession of the mines and working of them was a trespass continued against the United States and no rights could be gained thereunder, unless by some Act of Congress that trespass should have been excused and their possession legalized and co-firmed a question that arises later in this de-i-ion.

Act of Congress of March 2, 1901.

However, we have not been left without a guide to the question as to the powers of the Philippine Government during the interregnum just so mentioned, so far as mining rights in the Philippines are concerned. Congress itself has provided in the Act of Mar. 2, 1901, "that no sale or lease or other disposition of the public lands of the timber thereon or the mining rights thereon
292 shall be made." While this declaration of Congress amounts to no more than a declaration of a reserved power that already existed, namely, the exclusive right of Congress to legislate as to the disposition of the public lands in the Philippines, it leaves no doubt that from the time of its enactment the Government of the Philippine Islands in all its departments both judicial, legislative and administrative were absolutely barred from taking or recognizing any action whatever that in any way disposed of or encumbered the title to public lands including mineral lands in these Islands. All governmental action or recognition of mining locations by government officials between March 2, 1901, and July 1, 1902, in this direction was unquestionably a nullity.

The Holman and Illera Claims.

Taking up the matters presented in this case in their natural sequence, the alleged Spanish claims of one Hans Holman and Vicente Carrera as attorney for his uncle Agustin Illera next occupy our attention.

The evidence on this matter is presented by the defendant Reavis, apparently for the purpose of destroying the continuity of the possession of Fianza and the other plaintiffs and to justify "-is own entrance upon the possession of the said plaintiffs. The Court might dispose of this entire matter in a word, namely, that the finding of fact in this opinion number 13 disposes of the whole matter.

The court has given to the defendant Reavis, however, the full benefit of another finding of fact number 14 and credits him with having acted in good faith in the belief that he was entering upon the Holman grant or concession.

Laying aside the fact of the revolution of 1896 with its disturbing

features the claim of these two so-called Spanish denouncements of the mines claimed by plaintiffs is ridiculous.

This Court has set out at length in this opinion the terms — conditions which had to be complied with by a locator under the Code of 1867 which was the mining law of these Islands in 1896, in order to gain any right of possession, or title either, to the mineral lands of the Crown. The evidence also shows and is not disputed that in the year 1896 the plaintiffs' José Fianza, was the Gobernadorcillo of the pueblo of Itogon in which the plaintiffs' mines at Antamoc and Ampasit are located.

293 There is no doubt that the witness Hans Holman was in the pueplo of Itogon in the year 1896; it may be even assumed that a petition was presented by Hans Holman to the Politico Military Commandante of Benguet for the denouncement of a mine in Itogon. But even if such were the fact (a fact not proven) there is nothing to identify the lands in that denouncement with the lands embraced in the mines of the plaintiffs.

The witness Hans Holman, in addition to the fact that his manner of testifying and his appearance conduct and condition as a witness before this court renders his testimony of little credit or value, claims that the denouncement was not made in his name but in the name of one Pablo Emilio Herman, a clerk in the employ of his father Gustavo Holman and not his own name at all; upon examination the court finds that Pablo Emilio Herman did make a denouncement of a mine in Itogon in that year of 1896 for two pertenencias, but that said location was at an entirely different sitio than Ampasit and Antamoc and that it was a placer claim and not a quartz location, all as shown by the published reports of the Philippine Government (See Bulletin No. 2 of the Mining Bureau—abstract of the mine called "Arenas de Itogon").

These oral declarations of Vicente Carrera and Hans Holman are further discredited by the fact that there is, if true, written evidence of the fact of denouncement and outside of the government's records. When their petitions were presented to the Commandante, a receipt was issued and delivered to them signed by the Commandante and witnesses by the Secretary of the Commandancia of Benguet. Where are these receipts? Within ten days thereafter these men had to present to Commandante a certificate signed by the plaintiff José Fianza, that he, Fianza in his official capacity as gobernadorcillo *a* had set monuments and marks upon the land described in their petitions; his own mines as the defendant claims. Within three days of the receipt of the petitions a notice of the presenting of their petitions had to be sent, with a description of the land, to José Fianza for posting on the bulletin board of the pueblo of Itogon and then for three successive nights at or near sundown José Fianza in his official capacity as gobernadorcillo passed through that portion of the pueblo where the mines were located crying the bandillos

294 of location upon his own mines and giving notice to all parties concerned to present *there* protests and objections, if any, to the Politico Military Comandancia. And to all of these acts of Fianza the claimants must procure and present to the Coman-

dante the certificate of José Fianza as gobernadorcillo that the notices had been posted in Itogon and the bandillos had been published and cried by him in Antamoc. And is it to be presumed that all this could have been done without the emphatic protest of José Fianza? And then the development work had to be done within twenty days and the Comandante notified to visit and inspect the work and the setting of the mounds. Then the period of four months having elapsed from the date of the admission of the petition which it will be noticed is as yet only a permission to prospect, the claimant must ask for demarcation and present a sample of the mineral. Then the papers went to Manila and six months' time allowed to the Government's Mineral Surveyor to make a measurement and survey by which the land was segregated from the public domain: then through the Direccion Civil it went to the Governor General who issue*y* or refused the title of concession and each and ever*d* one of these steps was a necessary and essential proceeding before the possession of the claimant could be any thing more than a permission to prospect. Within five months (allowing one month for the transmission of mail from La Trinidad to Manila) the alleged denouncements of these men would have appeared upon the records of the Mining Bureau at Manila whose archives and records are practically complete, fully so far as books of registry are concerned, and had they not been surveyed they would appear in Bulletin No. 2 of the Mining Bureau as Second Class Claims. They do not so appear, and taking the testimony of these two witnesses at the most favorable weight to which they are entitled the Court sees nothing further in these statements than a possible intrusion of these men upon the old and productive Igorrote mines that for years had been worked and produced gold, taking advantage of the disturbed condition of the country in time of revolution and possibly presenting a petition to the Comandante, which of itself would give them no rights whatever and not amount to a denouncement in law. This court is no more secure in any declaration upon the facts in
295 this case than it is upon its finding that no denouncement was ever made by Holman and Illera and no rights ever accrued to them to the mines of these plaintiffs. Taking up the connection of defendant Reavis with these mines, the Court first considers the socalled

Antamoc Mining District.

This can be disposed of in a very few words. Antamoc was a mining community for years, probably for centuries, certainly for more than fifty years before the American Occupation. Its character as a mining district was known and its opened and worked mines gave notice to all the world so that he who runs may read. In the year 1901 a few American prospectors had come into this mining section and with not to exceed a half dozen, and without a particle of notice to any one else, they proceeded to meet and form a mining district after the customs of the United States and under the provisions of Congress which allows and recognizes within certain prescribed limits the power of the miners to form such districts and to

make certain regulations that have the force and effect of law. They provided for a Recorder and District Records and proceeded to stake out claims and record them under the American mining laws, a code of laws which as has been seen was not in force in these Islands and never has been. They defined the limits and boundaries of their district and adopted by-laws. One of these laws provided how subsequent meetings should be called and required a notice to be given and posted. All that they did, had it been properly called and held under and in accordance with law, would have been valid. But it was not so-called and held and its acts were a nullity. Every miner regardless of race and claiming or holding property within that district at its organization was entitled to be present and to vote. The evidence shows that there were many Igorrote miners so entitled to notice and to vote; but no notice was given to them. In a short time, this little close association of American prospectors held another meeting disregarding their own by-laws as to calling such meeting and giving notice of it publicly, and proceeded to changed the boundary lines. Again the Igorrote was conspicuous for his absence. The fatal mistake was made of ignoring the citizens of these islands who had and have equal rights before the law with the Americans and for this and for other
296 reasons not necessary to cite here, the whole proceeding was a nullity and would be so held in the United States. The action of provincial Governor Pack of Benguet in demanding these District Records added nothing whatever to their value.

Reavis Claims Under United States Mining Laws.

The alleged location of defendant Reavis under the United States Mining Laws with record in the Antamoc Mining District were excluded by the Court record in the Provincial Secretary's office of such locations are also excluded. The reasons for this are already apparent and the court now holds that such locations if made and recorded in the Recorder's Office of the Antamoc Mining District and in the Office of the Provincial Secretary were of no force and effect and conferred and vested no rights in the defendant. It has already been seen that the American Mining Law was never in force in these Islands and in addition to that on March 2, 1901, and before the defendant made his alleged locations Congress had strictly prohibited the Government of these Islands and its officials from any and all action looking towards the disposal of mining rights in public lands in the Philippines pending the enactment of laws by Congress upon that subject. In matter of law then the condition of these lands up to July 1, 1902, was that of mineral lands of the United States in the actual possession of the plaintiffs, with only a constructive possession under locations by defendant based upon the United States Mining Laws. This constructive possession will be noted later and authorities quoted thereon.

Were it not for the fact that this is, as the Court believes, the first case to come before the courts under the new mining law (Act of Congress of July 1, 1902, hereafter referred to as the "Philippines

Bill") the Court would dispose of this case without consideration of the locations attempted by the defendant under the provisions of the "Philippines Bill." The position formerly held by this Court as Chief of the mining Bureau together with years of residence in the west of the United States with consequent knowledge of the merits of the hardy and honest prospectors and miners and a full appreciation of their services and sacrifices in advancing and
297 developing the prosperity of the country wherever they go, leads the Court to take up and consider these locations under this law and to pass upon their effect and validity with his reasons therefor that the miners and prospectors now operating may have as a guide a judicial interpretation, at least, of this court, and in due time of the Supreme Court of the Philippines.

Reavis' Locations Under Philippines Bill.

Under the "Philippines Bill" defendant Reavis on October 1 and 3 1902 (the "Philippines Bill" having gone into effect on the 1st day of July 1902) attempted to locate three mining claims to which he gave the names of "Otek," "Texas" and "Clayton," upon certain lands in Antamok, which three locations cover and include all or nearly all of the lands embraced in the mines claimed by the plaintiffs. At the time of his locations the plaintiffs were in the quiet and peaceable possession of the lands, occupying and working them for mining purposes, and have ever since remained in such possession, under color of title, or claim of ownership, the defendant Reavis occupying and possessing them only in connection with the plaintiffs by virtue of an agreement entered into between Reavis on the one side and the plaintiffs on the other in the Month of May 1902, and before the "Philippines Bill" went into effect by which the plaintiffs permitted Reavis to occupy jointly with them but only for the purpose of doing his annual assessment work and until the question of the better right of the two claimants to the mines could be submitted to the courts. Except as his three locations may have given him a better right and an exclusive right of possession as against the plaintiffs and the Government of the Philippine Islands and the United States, Reavis has never had any other or further possession of the lands than that obtained in the manner just described.

For convenience, the three location documents complete have been inserted in the findings of fact in their exact form, the originals being somewhat dif-icult to decipher and understand. The copies are legible and exact.

These three claims are all connected and adjoining and together constitute a solid body of land. The Court accepts the sworn
298 statements of Reavis the defendant that upon each of these claims he has a separate discovery of a vein or lode and that these veins or lodes are not the same. The Court cannot hold that these three locations in a body are in violation of the prohibition of sections 33 of the "Philippines Bill," which prohibits a person from holding in his own name "more than one mineral claim on

the same vein or lode." Counsel did not elect to enter upon the proof as to this question and the only evidence thereon is the answer of defendant Reavis to the questions propounded to him by the Court.

By HAUSSERMAN:

"Q. State whether or not you discovered gold on each of these claims?
"A. I did."

By the COURT: "Was it in place?"
"A. Yes."

This Court is too familiar altogether with the strange discoveries that are constantly being made to question upon so slight evidence the validity of these locations under section 33 of the "Philippines Bill." It is certainly a very happy coincidence that three separate veins or lodes were discovered and all having the same exact course and direction so as to enable three claims to be thus located in their solid body. It is possible.

The initial location is the "Texas."

A large portion of this location notice must be eliminated as wholly irrelevant, immaterial and worthless, from any standpoint. The following items are stricken out, in order to put the document in such shape as to make it pertinent for the purposes for which it is *intended*:

These portions are "With Local Customs regulations &c. and with the laws of the United States (see note with diagram;") also,

"NOTE.—This claim was located and filed for record March 25, 1901, Book 1, page 14 Antamoc Mining District Perry Iams, Recorder and sufficient work has been done to insure me a patent under the U. S. Mining Laws under which I located and worked in good faith, complying with every particular thereof. Signed John F. Reavis."

"Location Notice."

This certifies that the undersigned citizen of the United
299 States of America having complied with the laws enacted by Congress March 1902, entitled "An Act to provide temporarily for conditions in the Philippine Islands has this day located and claim- 100 linear feet along a quartz lode bearing, gold and 1000 feet in width; situated in "Antamoc" province of Benguet, Island of Luzon, P. I., the name of claim to be "Texas" and fully described as follows: * * * *laying* north of the Clay River and near the sitio of Antamoc and *laying* on a quartz lead running in a northwest and southeast direction joining the river at the south west corner about 500 feet more or less below the crossing of the *trail* leading to "Comok" from "Atamok."

Located Oct. 1st, 1902.

Locator JOHN F. REAVIS.

In*i*tial Post No. 1. "Texas" quartz claim bearing gold. Located Oct. 1, 1902. Locator John F. Reavis. Dire*c*tion of Post No. 2 Northwest 1000 linear feet la*y*ing northwes- from Post No. 2 to post number of to post number one 100. Number of feet southwest of line, 900. See discovery 100 feet northeast of this post (post No. 1). Located Oct. 1, 1902.

Locator JOHN F. REAVIS.

Attest:

H. CLAY CLYDE.
H. P. WHITMARSH.

This document is supposed to comply with the provisions of section 33 of the "Philippines Bill"; it was recorded in the office of the provincial secretary of Benguet as Mining Recorder for the province on the 10th day of October, 1902. These provisions are:—

"Upon posts *n*numbered one and two shall be written the name given to the mineral claim, the name locator and the date of location. Upon post n*u*mber one there shall be written in addition to the foregoing "In*i*tial Post," the approximate compass bearing of post number two and a statement of the number of feet lying to the right and left of the line from post number one to post number, two thus, "In*i*tial Post. Direction of post number two * * * feet of this claim lying on the right and * * * feet on the left of the line from number one two post."

And "all the particulars required to be put on number one and number two posts shall be furnished by the locator to the provincial secretary—as mining recorder, in writing, at the time the claim is recorded and shall form a part of the record of such claim."

300

With the aid of "the sketch plan on the back of the declaration made by the owner when the claim is recorded" as provided in section 24, the Court holds that this declaration is sufficient so far as the particulars required to be furnished in writing to the recorder is concerned. The notice is carelessly and unskillfully drawn; refers to an act of Congress of March, 1902, and which does not exist, and the portion of the title is so incorrectly quoted that the "Philippines Bill" can never be recognized; while the *declaration* that it is intended to be is called a *notice of location*. Evidently the defendant has relied upon the common practice among American miners that has for its support the many liberal decisions of the Courts of the States and the United States that almost any thing is good for a notice of location. Under the American Mining Law this notice of location would be good; but it must be observed that the object and purpose of the Notice of Location under that law and that of the Declaration of Location under the Mining Law of the Philippines are radically different. The former serves as a notification only to third parties and technicalities in description are not essential however much they may be desirable. Under the latter it not only serves as a notice to third parties but it also furnishes the basis for a survey by the Mineral Surveyor when the claim shall be surveyed for patent, and the record of the claim as made by this declaration

and the other documents constituting the record are conclusive as to the boundary and limit and cannot be changed or amended nor can the information lacking in such record be supplied by the supplemental oral information. The record as an exact and definite location must be perfect and complete in itself. This Declaration of Location in the "Texas" comes very close to the boundary line and the court holds its sufficiency only upon the ground of the most liberal construction of the terms and provisions of the law in favor of the prospector and miner.

The "Philippines Bill" was promulgated and published in these Islands on August 14, 1902, more than six weeks prior to the location and nearly two months before its record; the law had
301 evidently been received and read by the defendant but still it is misquoted in both its date and title. But this declaration of location does not complete the record of the claim; an affidavit is required which must accompany the declaration as provided in section 28 of the "Philippines Bill." The declaration with the sketch plan on the back and the accompanying affidavit constitute collectively the record of location and this record is to be not only a guide to the surveyor but also the title to the mine and in the question of the title such as is raised in this case by the issues, this record—the recording as well as the record itself must be in compliance with the law and if found defective in either the title fails. (See Sect. 32.) This Affidavit must be a sworn affidavit. It must contain *prima facie* proof of the citizenship essential for a locator; the exact words written upon stakes numbers one and two must be set forth; it must contain the statement that the ground is *unoccupied;* and a description of the claim as to its location by reference to some actual object or monument; the name of the locator and the date of location. Now the burden of preparation of all these documents constituting collectively the record of the claim and the title of the locator rest upon the locator and not upon the recording officer. The Mining Recorder is not given judicial functions; his acts are ministerial only. The facts set forth in this affidavit must be true. This affidavit is not a mere matter of form, a notice to third parties only; it is a title deed, subject to further compliance with the law; it absolutely divest- the Government of its title and vests it in the locator.

Turning to the so-called affidavit as to the "Texas" which accompanied the recording of the notice of location, and sketch of the location, we find that it contains all the statements that section 28 of the law contains, and that the statements as to the stakes, boundaries and descriptions, etc., are not in conflict with those contained in the Notice of Locations. It also contains all the other statements including that of the ground being *unoccupied by any other person.* But the document evidently intended for an affidavit, and in a portion of the instrument so referred to, is clearly not an affidavit; it is not under oath and was not sworn to as the certificate of the provincial secretary P. E. Wager attached thereto distinctly states,
302 and as an affidavit it is wholly and utterly worthless and valueless. Whether it was in fact sworn to, the Court does not know; if such were the case it might possibly have been proved orally. (See 21 Am. and Eng. Ency. of Law (2nd Edition) p. 753) and authorities there cited.

But no such proof was offered and this Court is forced to hold that this instrument is not an affidavit and is not in compliance with the provisions of Sec. 28 of "Philippines Bill" and for the reason that it is not made under oath and so certified by an officer authorized by law to administer oaths. If the document presented by Reavis, as an affidavit, contains a false and untrue statement in any material portion could the defendant be charged and convicted thereunder of perjury? The answer to this must be in the negative for it does not pretend to be under oath or sworn to; it is a mere unsworn declaration. The certificate or jurat of the officer before whom an affidavit is taken must affirmatively show that an oath was administered; the signature of the affiant may be omitted, but the fact that the oath was in fact administered must affirmatively appear.

(See Borw. L. Dic. Title Affidavit.
Bac. Abr. Title Affidavit.
21 Am. and Eng. Ency. of Law (2nd Edition p. 753.
20 Am. and Eng. Ency. of Law (1st edition) 1082-3.
1 Am. & Eng. Ency. of Law (2nd edition) 909-10-11.
Bish. Crim. Law Vol. 2 Sec. 1018.
Bish Crim. Proceed. Vol. 2, 912 (4).

But the document does contain a false statement. It states that the ground was *unoccupied by any other person*. As a matter of fact it was occupied by the plaintiffs in this case; the defendant not only had full knowledge of this occupation; but in May 1902 he had entered into an agreement with the plaintiffs recognizing their occupation and agreeing to his own non-possession, taking a mere license to enter upon the lands for the purpose of doing some assessment work and for that purpose only; and that this should continue until the question of the better right should be submitted to the courts and by the courts decided. In violation of this agreement he files this attempt at record under the "Philippines Bill," without notice or settlement with the actual occupants of the land and without the plaintiffs having abandoned their possession. This action of
303 defendant Reavis leads to the fair presumption, whether true or not, that he has carefully avoided the taking of an oath in support of his declaration.

The record of the "Texas" is, for the reasons just stated, null and void and under it the defendant has acquired no rights whatever either as against the plaintiffs or the Government of the United States and the Government of the Philippine Islands, the owners of the paramount title.

The meaning of the term "unoccupied" as contained in the "Philippines Bill" Sect. 28) unquestionably means unoccupied for mining purposes. In this case we find that the lands were not only occupied for mining purposes but that they had been so occupied for more than fifty years. When Reavis first became acquainted with the lands it was mined and honeycombed with ancient working; the ink was scarcely dry upon his attempt to locate a discovered and worked mine in the Mining District when he received actual notice whom the occupants and claimants and alleged owners were. At each step of his proceedings he was confronted with *aucu* and additional notice.

In May 1902 when he was summoned to Court to try with Fianza the question as to which had the better right of possession; a suit which must, had it continued, have resulted in a verdict for the plaintiffs, he entered into a solemn and binding agreement before the Justice as an arbitrator admitting his wrongful entry upon the quiet and peaceable possession of Fianza; consented to abandon his claim and return accepted a license from Fianza not to mine the land and take the gold there from but to do certain assessment work required by a law that was not in existence. A possession so gained cannot be held in adverse possession and if the defendant has performed a large amount of development work on these lands, as he undoubtedly has, he has done all this with full notice, and at his peril, and it does not raise in his behalf any degree of equity that can be considered by this Court.

The only evidence presented by the defendant that might in any way modify this view of the Court is the evidence of one Francisco Velancio and the defendant himself that the house of Camantales, one of the plaintiffs, who was actually in charge of the mines and in occupation thereof for his co-owners and himself, was bought
304 by Reavis. Two bills of sale were produced and admitted in evidence which are represented as bills of sale from Camantales. How the defendant could be so misled by these documents the Court cannot understand. The name Camantales does in fact appear upon both of them but in both instances as a witness to the signatures of the grantees thereto and distinctly so stated in and upon the documents itself. The grantees are specifically named in the documents and Camantales is not one of them.

The Court can only relieve the defendant from the burden of his own testimony upon this point by his admitted ignorance of the Spanish Language in which the documents are written.

While the decisions of the courts of the United States are based upon the United States Mining Laws the principles of the United States Mining Laws as to registry and the effect of record thereof as an inception of the title of the locator is the same under the "Philippines Bill" with only the exception that the latter law is much more strict and much more carefully drawn with a view to protection of the mineral lands from fraudulent and speculative entry and in consequence the principles announced in the decision of the States and the United States Court are even more applicable.

These decisions will now be considered by the Court, after which, the "Otek" and "Clayton" locations will be briefly considered.

The conclusions and statements of Lindley on Mines are first quoted, and in full, since this Court is so far from points where authorities and professional advice are available as the best summary that this Court has found of the entire matter. The underscoring is that of the Court.

SEC. 216. "There can be no strictly lawful possession of such lands unless that possession is referable to the mining laws. There can be no color of title in an occupant who does not hold under any instrument proceeding or law purporting to transfer to him the title or to give to him the right of possession. And there can be no such thing

as good faith in an adverse holding where the party knows that he has no title and that under the law which he is presumed to know he can acquire none by occupation." (Deffeback *vs.* Hawks, 115 U. S. 392-404.)

As heretofore shown when dealing with occupants of the
305 public mineral lands for the purpose of trade or business *mere occupancy of the public lands and improvements thereon give no vested right therein as against the United States or one connecting himself with the government by compliance with the law.*

This is the universal rule as to all classes of public lands. *While this is true the occupant has certain rights based upon the fact of actual possession which from motives of public policy are accorded to him.*

As was said by the Supreme Court of California:—

"As against a mere trespasser, one in possession of a portion of the public lands will be presumed to be the owner, notwithstanding the circumstance that the Court as judicial notice that he is not the owner but that the government is. This rule has been maintained from motives of public policy and to secure to quiet enjoyment of possessions which are intrusions upon the United States alone." (Brandt *vs.* Wheaton 52 Cal. 430.) This is nothing more than a reiteration of the familiar rule, *that, as against a mere intruder or one claiming no higher or better right than the occupant, possession is prima facie evidence of title.* (Campbell *vs.* Rankin 99 U. S. 251.—Atwood *vs.* Fricot, 17 Cal. 38.—English *vs.* Johnson, 17 Cal. 108.—Hess *vs.* Winder, 30 Cal. 349.

But this is all that can be claimed. As against one connecting himself with the government this occupancy must yield to the higher right.

SEC. 217. Rights upon the public domain cannot be initiated *by forcible entry upon the actual possession of another.*

To what extent actual possession of any portion of the public mineral lands prevents their valid appropriation under the mining laws depends upon the facts and circumstances of each particular case. There are certain recognized principles, however, which are necessarily involved in all such cases, the application of which will, generally speaking, result in their proper solution.

It is a doctrine well established that no rights upon the Public domain can be initiated by a forcible entry upon the possession of another. A forcible and tortious invasion of such possession confers no privilege upon the invader, and can not be made the basis of a possessory title. A rightful seisin can not flow from a wrongful disseisin.

It has been distinctly held in cases arising under the former
306 pre-emption laws that no right of possession could be established by settlement and improve upon a tract of land considered to be public when the pre-emption claimant *forcibly intruded* upon the *actual possession of another who, having* no other valid title than possession, had already settled upon, inclosed and improved the tract; *that such an intrusion was but a naked and unlawful trespass and could not initiate a right of pre-emption.*

In conformity with this rule, it was wisely said by the late Judge Sawyer, in the ninth circuit, district of California, that the laws no more authorize a trespass upon the actual possession and occupation of another claiming a pre-emption right, *for the purpose of locating acquiring title to a piece of mineral land*, than to initiate an ordinary pre-emption right to a tract of agricultural land; that the law does not encourage or permit for any purpose unlawful intrusions and trespasses upon the actual occupation and possession of another. *To permit a right to accrue or confer authority to thus initiate a title to the public land, would be to encourage strife, breaches of the peace, and violence of such character as to greatly disturb the public tranquility.*

218. *Appropriation of public mineral lands by peaceable entry in good faith upon the possession of a mere occupant without color of title.*

Concerning that the law is correctly stated in the three preceeding sections, it is not to be understood that a mere occupant of the public mineral lands by virtue of such occupancy prevent, under all circumstances, their appropriation for mining purposes. The law interdicts entries effected *with force and violence for any purpose*. But a mere intruder upon the public lands, a mere occupant, whose possession *is not referable to some law or right conferred by virtue of an instrument giving color of title*, cannot by reason of such occupancy prevent a peaceable entry in good faith by one seeking to avail himself of the privilege vouchsafed by the mining laws.

The doctrine that by mere entry and possession a right may be acquired to the exclusive enjoyment of any given quantity of the public mineral lands, was condemned by

Atherton *vs.* Fowler, 96 U. S. 513.
Quinby *vs.* Conlin, 104 U. S. 421.
307 Homer *vs.* Wallace, 97 U. S., 575.
Cowell *vs.* Lammers, 10 Saw. 246.

and the Supreme Court of California in its earliest decesions. If such doctrine could be maintained, said that court,—

"It would be fraught with the most pernicious and disastrous consequences. The appropriation of these lands in large tracts for agricultural and grazing purposes, and the concentration of the mining interests in the hands of a few persons, to the exclusion of the mass of people of the state, are some of the evils which would necessarily result from such a doctrine."

There is no grant from the Government under the acts of Congress regulating the disposal of mineral lands, unless there is a location according to law and the local rules and regulations. Such a location is a condition precedent to the grant. *Mere possession, not based upon a valid location, would not prevent a valid location under the law.* This doctrine is clearly established by the Supreme Court of the United States in Belk *vs.* Meagher, affirming the decision of the Supreme Court of Montana. In that case Belk undertook to locate a mining claim. His entry was peaceable and he did all that was necessary to perfect his rights if the premises had been at the time open for that purpose. But at the time of such attempted appropriation the ground was covered by prior, and as the Court

found, a valid subsisting location. Subsequently this prior subsisting location lapsed, and thereafter Meagher relocated the claim, his entry for that purpose being made peaceably and without force. Belk brought ejectment, and being unsuccessful in the territorial courts took the case on writ of error to the Supreme Court of the United States.

It having been established that when Belk made this relocation in December, 1876, the claim of the original locators was still subsisting and valid, and remained so until January 1, 1877, the Supreme Court considered three propositions of law as necessarily arising in the case:—

Smith *vs.* Doe, 15 Cal. 101, 105.
Gilian *vs.* Hutchinson, 16 Cal. 154.
Belk *vs.* Meagher, 3 Mont. 65-80.
104 U. S. 279-284.

1. Whether Belk's relocation was valid as against everybody but the original locators, his entry being peaceable and without
308 force.

2. Whether, if Belk's relocation was invalid when made, it became effectual in law on the 1st of January, 1877, when the original claims lapsed.

3. Whether, even if the relocation of Belk was invalid, Meagher could, after the 1st of January, 1877, make a relocation which would give him as against Belk, an exclusive right to the possession and enjoyment of the property, the entry for that purpose being made peaceably and without force.

All three propositions were resolved against Belk, the court holding that *he had made no such location as prevented the lands from being in law vacant*, and that others had the right to enter for the purpose of taking them up, if it would be done peaceably and without force. His possession might have been such as would have enabled him to bring an action of trespass against one who entered without any color of right, but it was not enough to prevent an entry peaceably and in good faith for the purpose of securing a right under the acts of Congress to the exclusive possession and enjoyment of the property. This doctrine was held not to be in conflict with the rule announced by the same court in Atherten *vs.* Fowler, cited in a preceding section, wherein it was determined that a right of preemption could not be established by a forcible intrusion upon the possession of one who had already settled upon, improved, and inclosed the property.

The controlling force of the doctrine of Belk *vs.* Meagher has been abundantly recognized by the Courts since its promulgation.

96 U. S. 513.
Noyes *vs.* Black, 4 Mont. 427.
Hopkins *vs.* Noyes, Id. 550.
Sweet *vs.* Weber, 7 Colo., 443.
Horsewell *vs.* Ruiz, 67 Col., 111.
Russell *vs.* Hoyt, 4 Mont., 412.
Duprat *vs.* James, 65 Cal. 555.
Russell *vs.* Brosseau, *Id.* 6-5.
Garthe *vs.* Hart, 73 Cal. 541.

A similar doctrine had been previously announced by Judge Deady, United States district judge in Oregon, where a location of mining ground in the possession of Chinese was upheld, on the theory that this class of aliens could acquire no rights by loca-
309 tion, purchase, or occupancy upon the minerals lands of the public domain,—

As was said by the supreme court of Montana:

"Possession within a mining district, to be protected or to give vitality to a title, *must be in pursuance of the law* and the local rules and regulations. Possession, in order to be available, must be properly supported. The mere naked possession of a mining claim upon the public lands is not sufficient to hold such claim against a subsequent location made in pursuance of the law, and kept alive by a compliance therewith."

The right of possession comes only from a valid location.

Possession is good as against mere intruders, but it is not good as against one who has complied with the mining laws.

Several cases appear in the reports which might be construed to be not entirely in harmony with the rule announced in the foregoing cases. Some of them recognize the doctrine as to all ground not covered by *pedis* possession. Others do not mention the element of force as entitled to controlling weight in determining the question. In most of these cases the statement of facts upon which the decisions are based is very meager, and we are therefore unable to say to what extent, if at all, any — them repudiate the doctrine of Belk *vs.* Meagher. Be that as it may it can not be denied that if there is any conflict between the decisions here referred to and the doctrine announced by the Supreme Court of the United States, they must, to the extent of such conflict, be disregarded.

Chapman *vs.* Toy Lung, 4 Saw. 23.
Hopkins *vs.* Noyes, 4 Mont., 550, 556.
Hammond *vs.* Foster, Mont. 421.
Garthe *vs.* Harte, 73 Cal. 541, 543.
Eilers *vs.* Boatman, 3 Utah 159.
Armstrong *vs.* Lower, 6 Colo. 581.
Weise *vs.* Barker 7 Colo. 178.
Lebanon Mining Co. *vs.* Con. Rep. M. Co., 6 Colo. 380.
Faxon *vs.* Barnard, 4 Fed. 702.
North Noonday *vs.* Orient, 6 Saw. 507.

219 *Conclusions.*

We are *testified* in deducing the following general rules upon the subject under discussion:

1. *Actual possession of a tract of public mineral land is valid as against a mere intruder, or one having no higher or better*
310 *right than the prior occupant.*

2. *No mining right or title can be initiated by a violent or forcible invasion of another's actual occupancy.*

3. If a party goes upon mineral lands of the United States and either establishes a settlement or works thereon without complying

with the requirements of the mining laws, and relies exclusively upon his possession or work, a second party who locates peaceably a mining claim covering any portion of the same ground, and in all respects complies with the requirements of the mining laws, then such second party is entitled to the possession of such mineral ground to the extent of his location as against the prior occupant, who is, from the time said second party has perfected his location and complied with the law, a trespasser.

The peaceable adverse entry by the locator, coupled with the *perfection of his location operates in law as an ouster of the prior occupant.*

In some of the states laws are enacted protecting the right of a discoverer upon the public mineral lands for a limited period of time to enable him to perfect his location. Where no such local statutes are in force, according to the current authority, by the policy of the law a reasonable time is allowed to such discoverer to complete his appropriation. *During such periods the possession or occupation of the discoverer will be protected as against subsequent locators.* This subject will be fully considered in another portion of this treatise, and the *explication* of the doctrine above enunciated *to* such cases will there be fully explained.

This is substantially the charge to the jury upheld in

Horswell *vs.* Ruiz, 67 Cal. 111.

Belk *vs.* Meagher, 3 Mont. 65-80.

From the authorities quoted by Lindley and from others we select the following for more particular examination:

Belk *vs.* Meagher, 104 U. S. 279.

The following are the facts in that famous case which has been and is the rule for all subsequent construction and decision:—

"This is an action of ejectment brought by Belk the plaintiff in error to recover the possession of a certain alleged quartz lode mining claim, being, as is stated in the complaint, a relocation of a part — what is known as the old original lode claim.

311 "In July or August 1864 George O. Humphreys and William Allison located the discovery claim on the original lode and claims one and two west of descovery. These locations were valid and subsisting on the 10th day of May 1872 and no claim adverse to them then existed. No work was done on them between that date and June 1875. During the month of June, 1875 and before any relocation had been made the original locators or their grantees resumed work upon the claims and did enough to reestablish their original rights if that could be done by a simple resumption of work at that time. No work was afterwards done on the property by the original locators, or any one claiming under them; and it does not appear that they were in the actual possession of the claims or any part thereof on the 19th of December, 1876, or for a long time before. It is conceded by both parties that the original claim lapsed on the 1st of January 1877 because of a failure to perform the annual work required by the Act of Congress in such cases.

On the 19th of December, 1876, Belk made the relocation under which he now claims and did all that was necessary to perfect his rights if the premises were at that time open for that purpose. His entry on the property was peaceable, no one appearing to resist. Between the date of his entry and the 21st of February, 1877, he did a small amount of work on the claim which did not occupy more than two days of his time, and probably not so much as that, and he had no other possession of the property than such as arose from this location of the claim and his occasional labor upon it. On the 21st of February, 1877, the defendants entered on the property peaceably and made another relocation doing all that was required to perfect their rights if the premises were at the time open — them. The possession they had when this suit was begun was in connection with the title they acquired in that way.

In its decision the Court says:

"The right to possession comes only from a valid location. Consequently if there is no location there can be no possession under it. Location does not necessarily follow from possession; but possession from location. A location is not made by taking possession alone, but by working on the ground, recording and doing whatever else is required for that purpose by the Acts of Congress and the
312 *local laws and regulations. As in this case, all these things were done when the law did not allow it, they are as if they had never been done* (p. 284).

"A location to be effectual must be good at the time it is made. When perfected it has the effect of a grant by the United States of the right of present and exclusive possession. As the proceeding to locate is one in which the United States is not directly an actor, but is carried on by the locator alone, so that he may take what the United States has, through an Act of Congress, offered, to give, it is clear that there can be nothing to take until there is an offer to give." p. 285.

Upon the third question presented, viz: "Whether if Belk's relocation was invalid when made it became effectual in law on the 1st day of January 1877 when the original claim lapsed" and which was answered by the Supreme Court in the negative, the Court says:

"The position taken in his behalf is, that even if the original locators or their grantees, had, under the Act of Congress, a right to the possession of their claims until January 1st, a statute of limitations in Montana would bar their action against him for its recovery, because they had not been in actual possession within a year previous to his entry, and consequently his entry, though tortious as to them, was good as the beginning of an adverse possession, which if continued for a year would entitle him to a patent under the provisions of Sect. 2332 of the Revised Statutes. The statute of Montana relied upon is as follows:

"No action to recover any mining claim, whether placer or quartz, or any quartz, lead or lode or any interest therein nor possession thereof, unless the same is held under patent from the Government of the United States, shall be commenced or maintained unless *that* it is proved that the plaintiff or his assigns or predecessors in interest

were in the actual seisin or possession of such mining claim, quartz, lead or lode, within one year next before the commencement of such action." Laws of Montana 1872 p. 591.

And section 2332 of the Revised Statutes is as follows (not necessary to quote here; it is quoted at length hereafter see postea.)

"The Montana statute was passed January 11, 1872, and the Act of Congress under which both parties claim on the 10th day
313 of May thereafter. Under the Act of Congress as has just been seen, the original locators or their grantees, had what was equivalent to a grant by the United States of the right to the exclusive possession and enjoyment of the property until Jan'y 1st. Montana statute, if in any respects repugnant to this, was repealed to the extent of such repugnancy by the Act of Congress. As between possessors having no other title than such as is derived from mere occupancy, an action would undoubtedly be barred by the Montana statute. Whether that would be so in a case where an actual right of possession has been acquired under the Act of Congress is a question we need not consider as here the controversy is not between Belk and the prior locators. It is clear that whether in Montana an action could be maintained against him or not, *his right of location depended entirely on the Act of Congress, and under it as has already been seen what he did had no effect to secure to him the grant of any rights. All he got or could get by his entry was possession and that to be of any avail must be actual.*

Under the provisions of the Revised Statutes relied on Belk could not get a patent for the claim he attempted to locate, *unless he secured what is here made the equivalent of a valid location by actually holding and working for the requisite time. If he actually held possession and worked the claim long enough, and kept all others out, his right to a patent would be complete.* He had no grant of any right of possession. His ultimate right to a patent *depended entirely on his keeping himself in and all others out, and if he was not actually in, he was in law out.* A peaceable adverse entry, coupled with a right to hold the possession, which was thereby acquired, operated as an ouster which broke the continuity of his holding and deprived him of the title he might have got if he had kept in for the requisite length of time. *He had made no such location as prevented the lands from being in law vacant.* Others had the right to enter for the purpose of taking them up if it could be done peaceably and without force. There is nothing in Atherton *vs.* Fowler (96 U. S. 513) to the contrary of this. In that case it was held a right of presumption could not be established by *forcible* intrusion upon the possession of one who had already settled upon, improved
and enclosed the property. Upon that proposition the Court
314 was unanimous. We also all agree that if a peaceable entry has been made on lands which had not been enclosed and improved a good right might have been secured. The only difference of opinion we had was as to whether the entry in that case was by force or peaceably. A majority of the court thought it was forcible, while the minority considered that the case had been fairly put to the jury on the question of forcible or peaceable entry and

the effect of the verdict was that it had been peaceable." And immediately continuing the Court says:

"This brings us to the facts of the present case. No one contends that the defendants effected their entry and secured their relocation by force. They knew what Belk had done and what he was doing. *He had no right to the possession and was only on the land at intervals.* There were no enclosures and he had made no improvements. He apparently exercised no other acts of ownership after January 1st than every explorer of mineral lands of the United States does when he goes on them and uses his pick to search for and examine lodes and veins. As his attempted relocation was invalid his rights were no more than those of a simple explorer. In two months, he had done as he himself says no hard work on the claims and he 'probably put two days' work on the ground.' This was the extent of his possession. *He was not and original discoverer but he sought to avail himself of what others had found.* Relying on what he had done in December, he did not do what was necessary to effect a valid relocation after January 1. His possession might have been such as would have enabled him to bring an action of trespass against one who entered without any color of right, but it was not enough, as we think, to prevent an entry peaceably an- in good faith for the purpose of securing a right under the Act of Congress to the exclusive possession and enjoyment of the property. The defendants having got into possession and *her*fected a re-location have secured the better right. When this suit was begun they had not only possession but a right granted by the United States to continue their possession against all adverse claimants. The possession of Belk was that of a mere intruder while that of the defendants was accompanied by color of title." pp. 285 288.

In the case of Gwillim *vs.* Donnellan *et al.*, 115 U. S. 45,
315 the proceedings were had under the provisions of Sections 2325 and 2326 Revised Statutes of the U. S. to determine adverse claim to mineral location.

The syllabus of this case reads:

"In proceedings under Rev. Stat. Sects. 2325, 2326 to determine adverse claim to locations of mineral lands, it is incumbent upon the plaintiff to show a location which entitled him to possession against the United States as well as against the other claimant; and, therefore, when plaintiff at the trial admitted that the part of his claim wherein his discovery shaft was situated had been patented to a third person the court rightly instructed the jury that he was not entitled to recover any part of the premises and to find for defendants."

While this case arose under statutory proceedings as between two rival locators under the United States Mining Laws the Court in its decision reiterates the doctrines of Belk *vs.* Meagher, *supra,* and adds some further explanations. The *h*ourt says.

"A valid and subsisting location of mineral lands made and kept up in accordance with the provisions of the Statutes of the United States has the effect of a grant by United States of the right of present and exclusive possession of the lands located. If when one

enters on land to make a location there is another location in full force which entitles its owner to the exclusive possession of the land the first location operates as a bar to the second." Belk *vs.* Meagher 104 U. S. 279, 289.

"A location on account of the discovery of a vein or lode *can only be made by a discoverer, or one who claims under him.* The discovered lode must lie within the limits of the location which is made by reason of it. If the title to the discovery fails so must the location which rests upon it. If a discoverer has himself perfected a valid location on account of his discovery no one else can have the benefit of his discovery for the purpose of location adverse to him, except as a *relocator after he has lost or abandoned his prior right.*"

Other cases might be quoted but nothing new is developed and these cases are leading cases.

316 Referring now to the other two claims of the defendant, viz: the "Clayton" and the "Otek." If is only necessary to say that all that has been said as to the lack of a sworn affidavit in the "Texas" claim and the fact that the land was not at the time unoccupied applies with equal force to the "Clayton" and the "Otek" and in addition thereto there is a fatal variance between notice of location and the instrument supposed to be an affidavit in the case of the "Clayton." One of these documents states the parts to the right and left of the location line between numbers one and two posts at five hundred feet on each side while the other document states these distances to be one hundred and nine hundred feet respectively. In the case of the "Otek" the word fraction as applied to the name of the mine is lacking in the title of the mine in the several documents of record (save by note on the sketch) and is entirely lacking on the inscriptions said to be upon the posts numbers one and two. However, Sect. 29 defines an affidavit for fractions which has this clause at the end thereof, a clause which is entirely lacking in Sect. 28 namely: "Provided that the failure on the part of the locator of a mineral claim to comply with any of the for-going provisions of this sections shall not be deemed to invalidate such location if upon the facts it shall appear that such locator has actually descovered mineral in place on said location and that there has been on his part a *bona fide* attempt to comply with the provisions of this act and that the non observance of the formalities hereinbefore referred to is not of a character calculated to mislead other persons desiring to locate claims in the vicinity."

This language applicable to fraction claims is construed by the court in connection with the statement that the boundary line on the two sides to the left of the location line is the meanderings of the river to be a sufficient compliance with the provisions just quoted so as not to mislead other persons desiring to locate claims in the vicinity and is therefore good in this location would be sustained if it lacked nothing further. It however is like the other two, fatally defective in its record and for the lack of a sworn affidavit and is held by this court to be a null void location conferring no rights of possession or title whatever upon the defendant Reavis.

317 *Situation of Claimants on July 1, 1902.*

On July 1, 1902, the Act of Congress known as the "Philippines Bill" was approved by the President of the United States and became effective in the Philippines. This Act of Congress contains the Philippine Mining Laws, Section 61 of which reads as follows:

Sect. 61. "That mining rights on public lands in the Philippine Islands, shall, after the passage of this Act be acquired only in accordance with its provisions."

The situation of these claimants at the date of the passage and approval of this law becomes important. Neither the Government of the United States nor the Government of the Philippine Islands are parties to this suit and both parties claim a legal and valied title and superior *of* right of possession.

The plaintiffs were in the actual possession of the land on July 1st 1902. The defendant had only a constructive possession. In May 1902, he had entered into a solemn covenant and agreement with the plaintiffs recognizing this actual occupancy and reserving to himself only a license or permission to enter upon the lands to do assessment work required by the law under his location under the United States mining Laws, a code of laws that as we have already seen were never in force in these Islands. Defendant could not, then up to July 1, 1902, enter upon the lands or disturb the plaintiffs in their occupancy, except as provided in his agreement, and to permit him to do so would be permitting to take advantage of his own wrong. It makes his entry fraudulent. Defendant Reavis up to July 1, 1902, had relied upon the constructive or legal occupancy that results from a title gained by a location under a valid and existing law with a record of such location as provided by law. His attempts at such location under the U. S. Mining Laws could give him no such title and to gain a superior right as against plaintiffs by occupancy that occupancy must be an actual occupancy and an occupancy maintained as against every comer save only those who made entry forcibly. As the Supreme Court of the United States has said in Belk *vs.* Meagher, *supra*, a quota-
318 tion from which exactly describes defendant's position July 1, 1902, viz:

"Under the provisions of the Revised Statutes relied on Belk could *not get a patent for the claim he attempted to locate unless he secured what is here made the equivalent of a valid location by actually holding and working for the requisite time.* He had no grant of any right of possession. His ultimate right to a patent depended entirely upon his *keeping himself in and all others out and if he was not actually in," he was in law out.*

The situation of defendant Reavis both in law, and, under the evidence in this case, in fact also is clear and specific. "He was not actually in," and "He was in law out".

A suit to determine the right of possession brought by Reavis against Fianza and others on Jun- 30, 1902, and heard upon the same evidence presented in this case and covering the transactions

up to that date, must, upon the authority just cited, have been decided in favor of Fianza and others, the actual occupants, and against Reavis who chose to rely for his possession upon a law that had no application whatever to the Philippine Islands.

Situation of Claimants Now.

Up to October 1, 3, and 10, 1902, the situation of the claimants as just defined was not changed. Assuming now that the defendant Reavis on October 1st to 3rd obtained a peaceable and lawful entry upon said lands; that, being so upon the lands and without force, he staked and marked them under the Mining Laws of the Philippines, or attempted to do so; and thereafter on October 10, 1902, secured by the recording a "right to hold possession" superior to that of Fianza and his co-owners. In this which is the actual contention and claim of of the defendant Reavis, he brings himself within the provisions of law as stated in Belk *vs.* Meagher, *supra*, as against the actual occupancy of Fianza and his co-owners:

"A peaceable adverse entry, coupled with the right to hold the possession, which was thereby acquired operated as an ouster, which broke the continuity of his holding and deprived him of the title he might have got if he had kept in for the requisite length of time".

319 Had Reavis under such circumstances succeeded in making such a location under the Philippine mining laws (assuming of course that the lands were then public lands and not withdrawn from sale) that location might have operated as an ouster of Fianza and his co-owners and have given Reavis a "right to hold the possession" as against them, for,

"Mere possession, not based upon a valid location, would not prevent a valid location under the law" (Lindley on Mines §218).

"A mere intruder upon the public lands, and mere occupant, whose possession is not referable to some law or right conferred by virtue of an instrument giving color of title, cannot by reason of such occupancy prevent a peaceable entry in good faith by one seeking to avail himself of the privilege vouchsafed by the mining laws.) Lindley on Mines; §216) and,

"The mere naked possession of a mining claim upon the public lands is not sufficient to hold such claim against a subsequent location made in pursuance of the law, and kept alive by a compliance therewith". (By U. S. Dist. Judge Deady, Oregon. See Lindley on Mines §218).

"The right of possession comes only from a valid location". (Lindley on Mines, §218) and,

"Possession is good as against mere intruders, but it is not good as against one who has complied with the mining laws" (Lindley on Mines, §218) and,

(See also Lindley on Mines, §219, *supra*, Gwillin *vs.* Donellan *et al.*, 115 U. S. 45, *supra*).

This Court has construed the mining laws liberally and with the principle constantly in view, that, if possible, the validity of a loca-

tion shall be sustained: the court in effect has decided that the mining laws, as contained in the "Philippines Bill", are self-operative—a question that is not free from doubt—and which is not herein decided: that this location is not bound by the provisions of Act No. 624 of the Philippine Commission, enacted February 7, 1903, since his locations were made on October, 1902, and before the passage of said Act 624—another question that is not free from doubt—but not here expressly decided: in effect, this court holds (altho' not here decided) that Sect. 14 of said Act No. 624 which allows corrections in erroneous records to be made and when so made that they will
320 revert back to the date of the original record: the Court might even resolve the question of this land being "unoccupied", within the meaning of that word in the "Philippines Bill" as against the plaintiffs, following the American decisions above quoted only: and still in the case at bar this Court must hold, as did the Supreme Court of the United States in Belk vs. Meagher, *supra*, that as to Reavis' locations of October 1st and 3rd 1902, with record October 10, 1902, "He had made no such location as prevented the land from being in law vacant." Not only must the location upon the ground be in compliance with the statutes but the record must also comply therewith and in the absence of both or either the locations and records thereof are null and void and no rights are acquired thereunder.

See Sect. 32 of the Philippines Bill.

This section reads as follows:

SECT. 32. That in case of any dispute as to the location of a mineral claim the title to the claim shall be recognized according to the priority of such location, subject to any question as to the validity of the record itself and subject to the holder having complied with all the terms and conditions of this Act."

In the case at bar defendant Reavis has not complied with all the terms and conditions of the Act of Congress and the record of the mines "Otek," "Texas" and "Clayton," under which he claims title and the right to hold the possession are not valid. He is a trespasser as against the government and also as against these plaintiffs who are in the actual quiet and peaceable possession of these lands and were so in the actual, quiet and peaceable possession of the same when Reavis attempted to make his location and recorded the same. The relative situasion of the claimants, therefore, has not been changed since July 1, 1902. It remains the same as it was on June 30, 1902. The subdivision is based upon the theory that on and after July 1, 1902, the lands now claimed by the plaintiffs as scient Igorrote mines, under the names of "Antimoe" and "Ampasit", and upon which lands the defendant has unsuccessfully attempted to locate and record three mines under the present mining laws under the names of "Otek" "Texas" and Clayton," were within the meaning of said Act of Congress (the Philippines Bill): (*a*) Unoccupied and (*b*) public lands and (*c*) mineral lands, all three of which
321 are conditions prerequisite to enable any one to locate a mineral claim thereon.

Mineral lands they certainly were, that is conceded: but they were neither unoccupied nor public lands, as will be seen in the next subdivision.

Plaintiffs Have Title.

There can be no question whatever that on June 30, 1902, the lands embraced in the plaintiffs' mines named "Antamoc" and "Ampasit" were public mineral lands and that these plaintiffs had no other title or right to hold the possession thereof save that derived from an uninterrupted possession and working of the same for many years—certainly for more than thirty years.

This title or right to hold the possession was not good as against the United States of America; but this right to hold the possession was good as against the defendant Reavis; as has already been shown. The interests of Reavis up to that date did not constitute an adverse claim.

This land, then, being vested in the Congress of the United States it was in the power of Congress to dispose of it in any manner that Congress saw fit and there is no doubt in the mind of this Court that Congress has so disposed of it.

On July 1, 1902, by virtue of the "Philippine Bill" the mineral lands embraced in the "Antamoc" and "Ampasit" mines were granted to these plaintiffs, and the title thereto was thereafter and is now held in trust by the United States (and the Government of the Philippine Islands) for the use and benefit of José Fianza and his co-owners the other plaintiffs in this case, subject only to a valid adverse claim instituted and existing prior to that date, or after abandonment by these plaintiffs.

The Illera and Holman claims did not, even admitting that the first stemps for denouncement were made, constitute a valid adverse claim for they never reached a stage of proceeding under the Spanish mining laws that constituted a segregration of the lands or the granting of a concession. The adverse claim of defendant Reavis prior to July 1902 had even less foundation for validity for his
322 possession was not only not actual and continuous but it was instituted and claimed under a law that never had existed or been in force in these islands. Illera and Holman abandoned their claims which never did rise above a naked trespass and even if they did are distinctly repudiated by the Philippines Bill which excludes all classes of claims instituted under the Spanish Mining Laws save only "valid perfected mining concessions granted prior to April eleventh eighteen hundred and ninety-nine."

See Sect. 60 of Philippines Bill."

The plaintiffs claim title by Congressional grant under Section 45 of the "Philippines Bill." This section presently to be quoted in full, was not taken bodily from the United States statutes and dropped in to the "Philippines Bill" by accident. The United States statutes have a similar provision but the very difference between the two shows the Section 45 was not accident but a carefully prepared provision worded to fit different conditions than those that existed in the United States on May 10, 1872, when Section 2332 of the Revised Statutes of the United States (which is the section referred to) was enacted.

These two sections for convenience of comparison placed in parallel columns read as follows:—

Sect. 2332 Rev. Stat. U. S.

MAY 10TH, 1872.

SECT. 2332. "Where such person or association, they and their grantors, have held and worked their claims for the period equal to the time prescribed by the statute of limitations for mining claims of the State or territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

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Sect. 45, Philippines Bill.

JULY 1, 1902.

SECT. 45. That where such a person or association, they and their grantors have held and worked their claims for a period equal to the time prescribed by the Statutes of Limitations of the Philippine Islands, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this Act, in the absence of any adverse claim; but nothing in this act shall be deemed to impair any lien which may have attached in any way whatever prior to the issuance of a patent."

The Congress of the United States has jealously fostered and encouraged not only the development of its mineral resources on the public domain of its Great West but also has jealously guarded and protected the American Miners who in advance of State and Territorial governments, and after the Spanish-Mexican title was exhausted, poured into the Great West, prospected and opened and worked its mineral lands. These miners made Customs and Regulation to guide them and these Customs and Regulations were recognizing by Congress. Territorial and State legislatures passed statutes of limitations for mineral claims for the protection of possessory rights to mining lands and mines, and in a measure Congress in Section 2332 of the Revised Statutes of the United States confirmed them and granted patents to those who were in the actual possession of mines and working them, and had been so in possession and working the same for prescribed periods; and such lands so possessed and worked, held in the actual possession of the claimants as against all the world, were withdrawn from public mineral lands subject to location, and, as said by Gould and Tucker in their Notes on the Revised Statutes of the U. S. Vol. I. P. 547:—

"If all the requirements of this section have been satisfied the title is held in trust by the government for those who are entitled to a patent; the ground itself is not thereafter for sale."

When the Philippines Bill was framed in Congress there were many men in that body, especially in the United States Senate, who were familiar with both this provision and its justice and equity.

They came from that same Great West where Spanish-Mexican mining laws were well known and understood as well also as the conditions that existed in 1872 in that section of the United States and for which Section 2332 of the United States Revised Statutes was framed. It is only necessary to read the published reports of the Philippine Commission and those of the Attorney General of the United States to learn the facts that in Philippines there was no statute of limitations applicable to mineral lands and that
324 under Spanish mining laws there could be none since the doctrine of prescription as against the state was repugnant to the fundamental principle of Crown ownership and reservation of all mines and minerals within the kingdom and its colonies even in private lands. The Congress of the United States in its liberality to the natives of these Islands with just such cases in view as the mines of "Antamok" and "Ampasit" extended to the natives of the Philippines who were actually occupying and working their mines under no color of title or concession save that of possession only the same protection that in 1872 it had extended to its own hardy prospectors and miners in the Great West, and hence Section 45 substitutes for the Statutes of Limitations for mining claims of the State or territory the general statute of limitations of the Philippine Islands applicable to lands generally. Congress gave the free right to explore the public domain in the Philippines for minerals; but it attached to the right to locate and record a claim as an inception of title that the land must not be in the actual possession of another; that the land must be "unoccupied"; and again in Section 45 that if it was in actual occupancy and worked for minerals that while so occupied and worked it was withdrawn from sale. This right of possession might be lost by abandonment and thus the land become "unoccupied" and subject to location, but no entry founded upon an adverse possession gained by force, threats and fraud could become effective; such an entry would be a wrongful entry and thus would be accomplished the very evil that this law is calculated to prevent: an evil which is thus clearly and concisely stated in Lindley on Mines, Sect. 217, quoting from that eminent jurist and authority on mining laws Justice Sawyer of the ninth United States Circuit while presiding in the District of California.

"The laws no more authorize a trespass upon the actual possession and occupation of another claiming a pre-emption right, for the purpose of locating and acquiring the title to a piece of mineral land, than to initiate an ordinary pre-emption right to a tract of agricultural land: that the law does not encourage or permit for any purpose unlawful intrusions upon the actual occupation and possession of another. *To permit a right to accrue or confer authority to thus initiate a title to the public land would be to encourage strife, breaches of the peace and violence of such character as to*
325 *greatly disturb the public tranquillity.*

Not only was the land occupied on July 1, 1902, but it was also occupied in March 1901 when according to defendant Reavis' own statement he went to "Antamoc" to stake our land for himself that he believed was then claimed by another in the vernacular of the

miner "to jump Hans Holman's claim." He was not prospecting for a mine and for hidden minerals, he went to locate a mine already discovered and mineral uncovered and worked for more than a half of century. He found honest American miners and prospectors already there with claims staked all about the land that they believed was claimed by another and for the protection of which the opened, developed and worked mine and a rumor of an owner was amply sufficient to protect it from invasion and trespass. The defendant also saw that there were Igorrotes on the ground and that it was mined and worked—he could not talk their language—he cannot do so now—he don't even yet know one from the other—(with a few exceptions)—all as he tells himself under oath in this case. The Igorrote did not count then: the Igorrote had no rights and if they insisted on staying upon the ground that they and their ancestors had held mined and worked and objected to the setting of stakes and the intrusion of the defendant upon their lands they were to be sent to Bilibid.

That this Court does not exaggerate the situation just presented the following testimony selected from much in the record to the same effect abundantly shows:—

By REAVIS (Witness for himself):

Q. "State to the Court just what you did when you went to "Antamoc in the early part of 1901?"

A. "I went to Antamoc and I found ground that to my judgment was open for location and I put up my stakes.

Q. "Was there any one about the place when you located?"

A. "Yes! Igorrotes; and some Americans on the river?

Q. "Did you make any enquiry in regard to the land around there?"

A. "I learned when I went to the creek that it was all located on the west side of the creek and down the bend along the south side of the river and the prospectors all believed that the other side
326 of the river was a grant of land owned by Mr. Holman."

Q. "What inquiries, if any, did you make of the natives that were there?"

A. "I made no inquiries of any of them because I could not speak the language; but they told me voluntarily that mountain belonged to Holman."

(See Record pp. 92 and 93.)

(Defendant upon cross examination failed to explain how the native gave him the information as to Holman's ownership when he could not understand a word of their language.)

By REAVIS (Witness for himself):

Q. "How long did you prospect at Antamoc before you discovered a mine?"

A. "About half an hour or an hour. I discovered that it was a mineral country."

Q. "Did you then discover mineral in place?"

A. "Yes."

(See Record pp. 188 and 189.)

As an original discovery upon which to base a location it is not a matter of surprise that it took the defendant not to exceed an hour to discover that it was a mineral country and also discover gold in place. It had been worked and mined every year for at least fifty years. Still it was abandoned by its owners and there had been a mining law this discovery was sufficient. It is only remarked as showing the knowledge that defendant had that he was "Jumping some one's mine." Holman's, as he believed—but as he learned in a very short time afterwards not Holman's but the Igorrotes whom he found on the ground and in the actual possession of it.

The following testimony of the plaintiff Fianza is not specifically denied:

FIANZA (witness for himself):

Q. "Did you ever take any steps to inform Mr. Reavis that you claimed this property?

A. "I only informed Mr. Reavis that the mines were my property."

Q. "What answer, if any, did Mr. Reavis make?"

A. "He said that the Igorrotes had no rights to possess mines as they had no documents of any kind."

(See record p. 5.)

and referring to the same period:

327 By FIANZA (Witness for himself):

Q. "Did you protest at any time personally to Mr. Reavis about that post being there?"

A. "I protested personally to Mr. Reavis and he said to me if you take off that post you will go to Bilibid."

Q. "Did you remove any post off the property which you claim had been put there by Mr. Reavis?"

A. "No. I did not. I wanted to take off that post but he said to me "If you take off that post you go to Bilibid."

(See record pp. 10 and 11.)

To this blustering threat and wrongful intimidation the peaceful Igorrote miner acquiesced so far as to leave the post upon his lands that the defendant Reavis had set and maintained there without any right or authority whatever. In place of appealing to the law of force and violence to protect him in the possession of his own as did the miners in the early days of the Great West of the United States before courts and government were firmly fixed and established this Igorrote appealed to Governor Pack and invoked the process of the law against the American who had intruded upon his lands and held it by virtue of threats and intimidation. The agreement of May 1902 was the result in which as a consideration of the dismissal of the suit and as a compromise the defendant agreed to cease his attempts to drive out the Igorrote miners, leaving them in peaceful and quiet possession, while he rested upon his title and superior right of possession given him by the American mining law.

In sharp contrast with this conduct of the Igorrote is the treatment given to the sign or notice placed by Fianza upon a camarine upon

his lands. This sign which was of board with the letters burned into it or carved plainly thereon had written upon it:

Rancho de José Fianza por sus Minas de oro Denominadas Antamoc y Ampasit.

Let the defendant Reavis himself tell how he treated this sign.

By REAVIS (Witness for himself):

Q. "What did you do when you saw the sign board?

A. I took it down and broke it in four pieces and put
328 it in a little basket that was there so that the Igorrote could know that I had been there."

(See Record p. 194.)

It was to protect just such a case as that presented by the plaintiffs in this court against just such ag-ression and wrong as that presented by the defendant in his defense that Congress inserted Sect. 45 in the "Philippines Bill."

The Igorrote, like every other native citizen of these Islands, has rights, equal rights with every American citizen resident in these Islands, and the future of both depends upon their early recognition of this equality before the law. This equality of rights of property is the law of the land and the courts must sustain it. I have digressed thus far from the question of the plaintiffs' right in law that the justice or plaintiffs' right of possession, based upon the evidence, might be in part disclosed.

Under the law and the facts in this case as established by the evidence it is clear to whom the mines of "Antamoc" and "Ampasit" belong and to whom they must be given.

The following commands and decisions are quoted in relation to Section 2332 of the Revised Statutes of the United States, for since this section is to all intents the same as Section 45 of the "Philippines Bill" under which the plaintiffs in their pleading and proof claim their title and ownership to their mines, we must look to the construction and interpretation that has been put thereon by the courts and authorities of the country from whence this law was taken.

This Section is thus commented upon in Gould & Tucker's Notes on the Revised Statutes of the United States.

If all the requirements of this section have been satisfied, the title is held in trust by the Government for those who are entitled to a patent; the ground itself is not thereafter for sale. A relocator cannot entitle himself to a patent until the rights of a former locator have come to any end, and he has abandoned his claim and left the property open for another.

(Volume I, P. 547.)

Lindley on Mines Vol. 2, Sect. 688, thus summarizes the authorities and decisions upon this section 2332:

"One may, therefore, enter upon public land without loca-
329 tion, and if the extent of his possession is defined, his holding adverse against all the world save the government, and his

working of the claim be such for the required term as will indicate a continuous possession and user, he may apply for a patent, basing his right upon such possession and *under*."

"The acts of mining should not be merely occasional, fugitive, and desultory, but as continuous as the nature of the business and customs of the country permit and *and* require."

Stevenson *vs.* Wilson, 37 Wis. 482.
Wilson *v.* Henry, 35 Wis. 241.
Moore *v.* Thompson, 69 N. C. 120.
Colvin *v.* McCune, 39 Ia. 502.

"It has been contended that Section 2332 of the Revised Statutes only applies where the applicant is not adverse in the land office, and that in the presence of an adverse claimant who has made a location over the occupancy of the applicant, the possession wit*h*out location, howsoever long continued, must yield to the one properly locating, and the doctrine seems to be favored by the Supreme Court of Montana (McCowan *v.* Clay, 16 Mont. 234 and by the Supreme Court of Colorado (Cleary *vs.* Skiffich, 28 Colo. 362); but the Supreme Court of the United States has said that if a claimant actually hold possession and works the claim for the requisite time under the local statutes of limitation, his right to patent is complete. (Belk *vs.* Meagher 104 U. S. 279-287.) And the Supreme Court of California (Altoona Quicksilver Mining Co. *vs.* Integral Quicksilver Mining Co., 114 Calif. 100-105) has re-announced the doctrine (Buffalo Z & C Co. *vs.* Crump (Ariz), 69 S. W. 572-576; Risch *vs.* Wisemen, 36 Or. 484; Walsh *vs.* Erwin, 115 Fed 531.)

"In a previous article we have announced the rule that naked occupancy of the public mineral lands confers no title (§216), and that such occupancy must yield to one who in good faith and without force or violence enters upon the ground and perfects a valid location. (Sec. 218). This doctrine is, however, subject to the qualification *that the possession and user has not by operation of the statute of limitations ripened into a title* which is the equivalent of a location.

The late Judge Sawyer in 420 Mining Co. *vs.* Bullion
330 Mining Co., 3 Saw 634, Fed. Cases 4989, says that the laws of the state constitute a part of the laws by which a mining rights is determined. "It must, therefore, follow that where such possession has continued for five years before the adverse right exists (in California) it *is* equivalent to a location under the laws of Congress."

In Altoona Quicksilver M. Co., *vs.* Integral Quicksilver M. Co., 114 Calif. 100, it was held that:

"Under Section 2332 of the Revised Statutes, the holding and working of a mining claim for five years before any adverse claim is made thereto, is equivalent to a valid location, and confers the right of possession."

In the light of these decisions the meaning of the wording "unoccupied" as applied to mineral lands has its full meaning elucidated and made clear.

The statute of limitations of the Philippine Islands applicable to the case at bar is found in Chapter III of Act 190- of the Philip-

pine Commission, enacted August 7, 1901, and is the provision referred to by Congress in the "Philippines" Bill." This period is ten years.

The procedure for obtaining the patent to which the American miner claiming a right thereto is entitled under Sect. 2332 of the Revised Statutes of the United States is fully provided for in the "Land Office Regulations" and is thus stated by Copp in his American Mining Code (Ed. 1900) p. 18, 19.

"69. With regard to the proofs necessary to establish the possessory right to a mining claim, Sect. 2332 provides that" where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for the mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim."

"70. This provision of law will greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory rights to which all controversy or litigation has long been settled."

331 "71. When an applicant desires to make his proof of possessory right in accordance with this provision of law, he will not be required to produce evidence of his location, copies of conveyances, of abstracts of title, as in other cases, but will be required to furnish a duly certified copy of the statutes of limitations of mining claims for the State or Territory together, with his sworn statement giving a clear and succinct narration of the facts as the origin of his title and likewise as to the continuation of his possession of the mining ground covered by his application; the area thereof; the nature and extent of the mining that has been done thereon whether there has been any opposition to his possession or litigation with regard to his claim and if so when the same ceased; whether such cessation was caused by compromise or by judicial decree and any additional facts within the claimant's knowledge having a direct bearing upon his possession and *bona fide* which he may desire to submit in support of his claim."

"72. There should likewise be filed a certificate under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending and that there has been no litigation before said court affecting the title to said claim or any part thereof, for a period equal to the time fixed by the statute of limitations for mining claims in the State or Territory as aforesaid other than that which has been finally decided in favor of the claimant."

"73. The claimant should support his narrative of facts to his possession, occupancy and improvements by corroborative testimony of any disinterested person or persons of credibility who may be

cognizant of the facts in the case and are capable of testifying understandingly in the premises."

The Philippine Commission has not yet issued the needful rules and regulations for carrying the provisions of section 45 of the "Philippines Bill" into operation. The authority to do so is expressly granted by Congress in said bill (Sect. 57- "The Government of the Philippine Islands is authorized to issue all legal rules and regulations for carrying into effect the provisions of this and preceding sections relating to mineral lands." Act No. 624 does
332 not cover the case arising under said Section 45. In due time this will of course receive the consideration of the Commission and the rules and regulations will be issued. The volume of labor laid upon the Philippine Government is such that it is impossible for all things needful to be done at once, and the Court marvels at the amount that has already been accomplished.

Until this matter shall be reached in its due and proper course of relative importance and disposed of by the Philippine Commission and while the plaintiffs continue in their occupancy and in the working of the lands embraced in their mines called "Antamoc" and "Ampasit", or until the plaintiffs themselves shall voluntary abandon their possession and working of the same these lands are withdrawn from the public mineral lands and from location or sale and the title thereto is held in trust by the Government of the Philippine Islands for the use and benefit of plaintiffs and their heirs.

The general finding of the court is in accordance with the decision announced in this opinion. Let a decree be prepared in accordance therewith and the injunction heretofore issued against the defendant be made perpetual and costs awarded to the plaintiffs.

Done in open court this 4th day of April, 1905, at Baguio, Benguet Province, P. I.

(Signed) CHARLES H. BURRITT,
Judge Mountain District.

UNITED STATES OF AMERICA, *Philippine Islands:*

Mountain Judicial District.

In the Court of First Instance for the Province of Benguet. In Chancery.

JOSÉ FIANZA ET AL.
vs.
JOHN F. REAVIS.

This cause having been heard and argued by counsel orally and with briefs, came on this day for judgment on the bill and
333 amended bill of the plaintiffs, the answer of defendants, the evidence taken and exhibits filed. For a statement of the facts reference must be made to the opinion and judgment of this Court as a part hereof. The Court finds for the plaintiff under the Statute of Limitations in the Act of Congress of July 1st, 1902,

holding that the Government of the Philippine Islands holds the title in trust for the plaintiffs. It is adjudged, ordered and the decree that the temporary injunction issued in this cause on the 18th day of January, 1904, be and is hereby made perpetual. Costs are awarded for the plaintiffs and it is directed that execution be issued for same in regular course. The attorneys for defendant not being present but being advised by telegraph of this decision, it is directed that an exception be allowed them to this judgment and a motion for new trial on statutory grounds, if said exception and motion be filed as required by law.

Done in open Court, etc., April 4th, 1905.

(Signed) CHARLES H. BURRITT,
Judge 1st Instance, Mount. Jud. District.

The defendant duly excepted to the findings of fact and the judgment of said Court and on the 13th day of April, 1904, filed in writing a motion for a new trial as follows:

"UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the Province of Benguet.

JOSÉ FIANZA, Plaintiffs,
vs.
JOHN F. REAVIS Defendant.

Now comes the defendant in this the above entitled action by his counsel, and moves the Court to set aside and vacate the decision and judgment hereinbefore entered, and grant a new trial of said action for the following reasons: (1) That the findings of fact were plainly and manifestly against the weight of evidence. (2) That the evidence was insufficient to justify the decision. (3) That the decision and judgment of the Court is against the law.

(Signed) COUDERT BROTHERS,
JOHN W. HAUSSERMANN,
CHAS. C. COHN,
DANIEL R. WILLIAMS,
Attorneys for Defendant."

Said motion for a new trial was heard by the Court and overruled on the 24th day of April, 1905, to which ruling and decision of the Court the defendant then and there duly excepted, and gave notice of an intention to present and perfect a bill of exceptions and to appeal said cause to the Supreme Court of the Philippine Islands.

334

That upon the application of defendant, the Court granted the defendant time until the 22nd day of May 1905, within which to present and file his bill of exceptions.

The defendant refers to all of the evidence introduced and heard at the trial of said action, together with the exhibits and depositions

submitted to the Court and makes the same a part of this, his bill of exceptions.

And the defendant, on the — day of May, 1905, and within the period allowed by law for the presentation of a bill of exceptions, and during the term of Court at which said judgment was rendered, presents this, his bill of exceptions to the Judge of said Court and asks that the same be approved, perfected, allowed and signed by the Judge of said Court.

COUDERT BROTHERS,
JOHN W. HAUSSERMANN,
CHAS. C. COHN,
DANIEL R. WILLIAMS,
Attorneys for Defendant and Appellant.

Received copy of the within bill of exceptions this 18 day of May, 1905.

PILLSBURY & SUTRO,
Attorneys for Plaintiff.

The above bill of exceptions is hereby certified to be true and correct.

CHARLES H. BURRITT,
Judge Mountain Judicial Dist., Court of 1st Instance, Prov. of Benguet, P. I.

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 16 day of June 1905.
9-50 a. m.

J. E. BLANCO, *Clerk.*
By H. D. McGEORGE, *Deputy.*

335 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court.

No. 2940.

JOSE FIANZA ET AL., Plaintiffs and Appellees,
vs.
J. F. REAVIS, Defendant and Appellant.

It is hereby stipulated that the bill of exceptions herein may be amended by including therein the following statement:

"During the trial of said cause, on motion of plaintiffs and with "the consent of the court, the defendant objecting thereto, the com- "plaint was amended as follows:

"Plaintiffs, by consent of the court, hereby amend the first para- "graph of the complaint herein, to make the description of the "property in litigation conform to plaintiffs' evidence, so that the "said first paragraph as amended shall read as follows:

"First. For many years, the number of which is unknown to "your orators, they and their ancestors have owned, possessed and "worked two gold mines lying in the barrio of Antamok, in the "township of Itogon, Province of Benguet, the description of which "mines appears by plaintiffs' Exhibit C, which is hereby made a "part of this complaint, the boundaries of which mines are marked "by posts set into the ground, and which boundaries are well known
"to all of your orators' neighbors, said mines being well de-
336 "veloped, opened mines, called Antamok and Ampasit. To
"the admission of this amendment the defendant duly ex-"cepted."

November —, 1905.

COUDERT BROTHERS,
Attorneys for Appellant.
PILLSBURY & SUTRO,
Attorneys for Appellees.

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 14 day of Nov. 1905.
8:35 A. M.

J. E. BLANCO, *Clerk,*
By —— ——, *Deputy.*

337 THE UNITED STATES OF AMERICA.

In the Supreme Court of the Philippine Islands.

No. 2940.

JOSE FIANZA ET AL., Plaintiffs and Appellees,
vs.
J. F. REAVIS, Defendant and Appellant.

WILLARD, *J.:*

The plaintiffs brought this action in the court below to enjoin the defendant from interfering with two gold mines alleged to be the property of the plaintiffs. A temporary injunction was granted as prayed for in the complaint, the case was tried in the court below and the injunction made perpetual. The defendant moved for a new trial, which was denied, and he has brought the case here by bill of exceptions. The court below found, among other things, substantially as follows:

More than fifty years prior to the commencement of this suit one Toctoc, an Igorrote, and the grandfather of Jose Fianza, one of the plaintiffs, was in the sole and exclusive possession of certain mineral lands containing gold quartz, situated in Antamoc, in the jurisdiction of Itogon, in the province of Benguet. These lands, being the same in dispute in this case, were of irregular boundaries and contained about 183,000 square meters, and were situated on
338 the slope of the mountain or hill called "Antamoc Mountain," and were divided into two parts by a small arroyo

called Antamoc, the mine on one side being known as "Antamoc" and the other "Ampasit". The two tracts were connected and formed one tract.

These lands or mines during the lifetime of Toctoc were opened and developed mines and worked from year to year and after the style and manner of Igorrote miners and their customs of mining, the said Toctoc claiming the ownership of said mines, and his title and ownership thereto were generally known and recognized by the people of the community and the vicinity.

Toctoc had no paper title to said mines under the Spanish Government. No title or concession was ever granted to Toctoc or his heirs and successors, and the plaintiffs have no such paper title thereto.

On the death of Toctoc his son, Dominguez, succeeded him in the possession and ownership of said mines, in all respects as his father had held and claimed them, and continued to so hold and claim and work them to the exclusion of any and all others, and without dispute, interference or interruption until the date of his death, which occurred about ten years prior to the commencement of this suit. Upon the death of Dominguez, the plaintiff, Jose Fianza, and his coplaintiffs, as heirs-at-law of the said Toctoc and Dominguez, came into possession of said mines under like claims of title and ownership, possessing, working and claiming them as owners, to the exclusion of any and all other claimants, and without interference or adverse claims of any kind, and continued to do so up to the date of the commencement of this suit, except as thereafter in said decision stated.

339 The court further found that as in the case of Toctoc and Dominguez, the ownership of these heirs and claimants to these mines was well known and understood among the natives and residents generally of the province, including the Spanish officials, and generally recognized and their possession respected. For more than fifty years these mines were held and worked in this Igorrote family, and at the time of the American occupation were well-known, discovered, improved and developed mines, and had produced gold for many years, and were still producing gold. During all the time covered by the disputes that have arisen between the parties to this suit, some of the parties have been living upon and next to the lands in dispute, and holding possession thereof and working the same for themselves and their co-claimants. Three of the plaintiffs were there living in possession of said mines prior to the arrival of the defendant Reavis. They have continued since that time to so live upon and possess the same up to the date of the commencement of this suit, and without interruption, save by the acts of the defendant Reavis as thereinafter stated in said decision.

The court further found that in the month of March, 1901, the defendant Reavis entered upon the lands embraced in and next to the mines of the plaintiffs and upon the alleged information that said mines of the plaintiffs had been located under the Spanish Mining Law by one Hans Holman in the year 1896, and that said lands and mines were abandoned by the said Holman and were vacant

mineral and public lands, proceeded to stake and locate three claims under the mining laws in force in the United States, and including the mines of the plaintiffs, which claims were named by the said Reavis the "Otek," the "Texas" and the "Clayton." Immedi-
340 ately after this act of Reavis, the plaintiff, Fianza, for himself and his coplaintiffs, protested against the placing by Reavis of the stakes upon his mines, and made a formal protest to H. P. Whitmarsh, then Governor of Benguet. In May, 1902, the plaintiff, Fianza, again made a formal protest to William F. Pack, then Governor of the Province of Benguet, of the trespass and usurpation of Reavis upon the mines in question. A hearing was had before the Governor, in which Reavis took part, and it was agreed between the plaintiffs and Reavis that Reavis would not interfere with the actual possession of the plaintiffs and their working of the mines, and that the plaintiffs should not prevent Reavis from coming upon the land from time to time for the purpose of doing assessment work, and that this should continue until the questions in dispute between them could be submitted to the Court of First Instance for decision. A few days after this, and before July first, 1902, the plaintiffs caused the boundaries of their claims and mines to be distinctly marked by substantial posts and monuments. These posts were placed by the plaintiffs prior to the locations under which the defendant Reavis now claims. Prior to July first, 1902, Fianza placed upon a building standing upon the property in question a wooden sign with a printed notice thereon stating that they were his mines. A few days thereafter Reavis removed the sign and broke it up. On the tenth day of October, 1902, Reavis made and caused to be recorded in the office of the Provincial Secretary of Benguet three several declarations for claims or mines named by him "Otek," "Clayton" and "Texas," covering the same ground as his previous attempt to locate under the United States mining laws.

Reavis having presented evidence to show that Vincente Carrera in the year 1896, and Hans Holman in the same year, de-
341 nounced these mines in accordance with the Spanish mining laws, the court found that neither of these alleged denouncements were in fact made at any time, and that no denouncement, location, or entry upon the lands in question had ever been made by any person under the Spanish mining laws in force in these Islands.

The court further found that Reavis entered upon the mines in the year 1901 and staked out his three claims in the honest, though mistaken, belief that the same were included in an abandoned and forfeited Spanish grant of Holman's, and that at the time of his entry thereon and the setting of his stakes he had no actual knowledge that the Igorrotes who were then living upon the lands claimed the ownership of said mines, but that within a few days after this entry he received notice of the plaintiffs' claim of ownership and before he had expended any considerable amount of either time, labor or money thereon. When he made his locations and filed the declarations under which he now claims, he had full knowledge of the claims of ownership of the plaintiffs and that the plaintiffs were at that date, and for a long time prior thereto, and before the passing

and approval of the Act of Congress of July first, 1902, had been in the actual possession and working of said mines.

Up to the month of May, 1902, Reavis was not in the actual and continuous possession of the lands embraced in his attempted locations and his only possession was when he entered thereon from time to time to do assessment and development work, and his possession for such purposes was maintained by threats and intimidation and against the protest of the plaintiffs.

In the year 1901 the plaintiffs took from the said mines gold of the weight of 40 silver pesos; in the year 1902, the weight of
342 70 silver pesos; and in the year 1903, the weight of 90 silver pesos.

The above statement of facts found by the court below is not complete, but it is sufficient, we think, for the purposes of this decision.

The first defense to the action is, according to the brief of the appellant, that the land sued for is not described in the complaint with sufficient certainty or definiteness to support a judgment for the plaintiffs.

During the trial in the court below, the complaint was, by leave of the court and against the objection and exception of the defendant, amended so that the first paragraph should read as follows:

"1st. For many years, the number of which is unknown to your orators, they and their ancestors have owned, possessed and worked two gold mines lying in the barrio of Antamoc, in the township of Itogon, Province of Benguet, the description of which mines appears by plaintiff's exhibit C, which is hereby made a part of this complaint, the boundaries of which mines are marked by posts set into the ground, which boundaries are well known to all of your orators' neighbors, said mines being well developed, open mines called "Antamoc" and "Ampasit."

Exhibit C which is thus made a part of the complaint is a plan made by a surveyor. It gives the courses and distances of the boundary lines, the boundaries by reference to natural objects, and the relation of such objects by distances to the lines of the survey. According to the brief of the defendant, the land described in this plan is 1542 feet on one side; 1075 feet on the second side; 887 feet
343 on another side, and 742 feet on the fourth side, and there can be no doubt that the tract of land described in this Exhibit C can be accurately located upon the ground. There is therefore no doubt that the description contained in the amended complaint is sufficient.

The real objection is that the court erred in allowing the amendment. In view of the provisions of sections 109 and 110 of the Code of Civil Procedure relating to amendments, this objection can not be sustained.

The second defense, according to the appellant's brief is that the record does not disclose how or in what way the land claimed by plaintiffs conflicts with defendant's locations.

More or less evidence was offered to show where the defendant's claims were. It is apparent that all or nearly all of the defendant's location "Otek" is outside of the land claimed by the plaintiffs. It

is also proven that some if not all of the other two locations are within the lands claimed by the plaintiffs. We do not see how it is important to determine exactly the location of the defendant's claims. The location of the plaintiffs' land is determined with accuracy and the judgment of the court below prohibits the defendant from interfering with that well-defined and well-ascertained tract of land, and there can be no trouble in enforcing that judgment so far as the description of the property is concerned.

The third defense, according to the appellant's brief, is that the plaintiffs have never possessed or mined any particular tract of ground under claim of ownership to the exclusion of all others.

It will be noticed that the court below found to the contrary of what is stated in this defense. We can not reverse the judgment unless it appears that this and other findings of fact made by the court below are plainly and manifestly against the weight of the
344 evidence. De la Rama *vs.* De la Rama, 201 U. S. 303. We are entirely satisfied that no such conclusion can be reached and we are also satisfied that the evidence not only is not contrary to the findings, but that the latter are supported by the preponderance of proof.

So much stress is laid upon this point by the appellant that it seems necessary to consider in some detail the evidence. The appellant upon this point claims: first, that there never were any mines, as that word is properly understood, on the land in question, but merely slight excavations which were abandoned practically as soon as made, and, second, that plaintiffs have not in any event, been in the continuous possession of the mines.

Upon the first question, as to whether these were real mines or not, it appears from the record that on the 31st of January, 1901, and before Reavis ever appeared in Antamoc, Fianza, one of the plaintiffs, made written declarations "relativas á las dos partidas de Minas de oro, que radican en Antamoc, de esta jurisdiccion, las cuales venian disfrutando desde mas de veintidos años, habiendolas recibido como herencia, de sus antepasados." These declarations were made for the purposes of taxation and on the 11th of February, 1901, he paid the taxes on this and other property, as he did also in 1902 and 1903.

That these were certain, definite and well-known mines is proved by the evidence of the defendant's witnesses. Vicente Carrera, who said that he had denounced the mines, testified: "I denounced the mines which are situated at the eastern part of the Houses named Antamoc and I also denounced the mines situated on the western part of the Houses which are called Ampasit."

* * * * * * *

345 "Q. What work, if any did you ever do on that ground after you denounced them?

A. Nothing because they were not ceded to us, with the exception of the road we made which goes to the mines. * * * We had to build a road from the main trail to the mouth of the mine."

He testified also that he bought gold from Dominguez, and when asked where Dominguez got this gold he said:

A. I don't know, but I think he got it from Antamoc, because I know the nature of the fineness of the gold from these mines."

Q. And then the people were already working these mines you denounced?

A. Yes.

* * * * * * *

Q. Do you know who, according to public rumor was the owner of those mines?

A. Public rumor among the Igorrotes was that they were the mines and property of Dominguez."

Robiera, another witness for the defendant testified:

"I have seen the excavations from a distance. From a distance I saw where dirt had been thrown up out of the excavations, but I never have been up to the mines."

Francisco Velancio, another witness for the defendant, testified:

"Q. How many times did you see Fianza and his father go up to these mines in Antamoc?

A. I saw his father going up there often.

Q. How often did you see Fianza going up to the mines?

A. Sometimes I saw him in the mines at Antamoc."

Hans Holman, another witness for the defendant, on whose
346 adverse claim to this same property the defendant relies to defeat the prescription alleged by the plaintiffs, shows the existence of well-defined mines. He testified:

"A. We denounced that mine and the papers which we made out were burnt up in the comandancia during the Spanish Government. We commenced the denouncement of that mine in 1896."

H. P. Whitmarsh, a witness for the defendant, testified:

"A. Yes. The first trip I made up to the Trinidad I went over to Antamoc. I went there to get information about the mines and the country. I was a newspaper reporter then.

* * * * * * *

Q. Did you have any talk with him (Fianza) in reference to mines in Antamoc?

A. All about the mines in the vicinity. He advised me to go over to Antamoc to look at them."

J. E. Kelly, a witness for the defendant, testified that he became acquainted with the property now claimed by Reavis in January, 1901, when he first arrived in Benguet; that having learned that Holman had an interest therein he went to Manila to see him in March or April of the same year "with a view to purchasing his Antamoc holdings." Holman then told him that he had a mine there.

Reavis knew of Holman's claim, and before he did anything at all upon the property went to see him and was told by Holman that he, Holman, had a certain number of meters there and that anyone could tell him where the property was. Reavis made no further investigation and a few days thereafter, and in March, 1901, made his first entry upon the land. The following question was asked Reavis by his counsel:

Q. What induced you to locate upon land which had been
347 pointed out to you as Holman's grant?

A. Because I had learned previously that there were no

grants in this part of the country, and thinking that Mr. Holman had not complied with any of the laws and didn't intend to, I thought I would go into it and see what chance I had with it."

Commenting apparently upon this answer the court below in its decision said:

"He went to Antamoc to stake out land for himself that he believed was then claimed by another,—in the vernacular of the miner, to 'jump Hans Holman's claim'. He was not prospecting for a mine and for hidden minerals; he went to locate a mine already discovered and mineral uncovered and worked for more than half a century. He found honest American miners and prospectors already there with claims staked all about the land that they believed was claimed by another and for the protection of which the opened, developed and worked mine and a rumor of an owner was amply sufficient to protect it from invasion and trespass."

Reavis was asked this question:

"Q. How long did you prospect at Antamoc before you discovered a mine?

A. About half an hour or an hour, I discovered that it was a mineral country."

William Knoubcr, another witness for the defendant, testified that while a soldier in the American army at Bautista he became acquainted with a Spaniard, Teodoro Miguel, who had been in Benguet. He brought Miguel to Manila and afterwards took him to Baguio and was at Antamoc on the ninth of January, 1900. He was asked this question:

"Q. Did you make any inquiries as to whether or not there were any mining claims in Antamoc?

348 A. Yes, sir. This is mostly what I went there for.

* * * * * * *

A. The Spaniard and I went down to Itogon. We looked for the presidente or someone that knew of this mine or property, who it belonged to and who was supposed to own it. This man Fianza said he knew the property and knew it belonged to Mr. Holman. * * * Of course we couldn't do anything, so when I went back to Manila I went to see Mr. Holman about it and he showed me maps and papers of the different pieces of property."

Knoubcr testified that he went out to the property with Fianza, who pointed out Holman's stakes, and that he then saw men digging upon the land included within the stakes.

That this claim of Holman's is the same land now claimed by the plaintiffs is proved by the testimony of Holman himself. Exhibit C having been shown him he stated:

"Q. Is this paper, plaintiffs' Exhibit C, the plan of the ground you located?

A. It is.

Q. How do you know this is the same land you denounced?

A. I went there myself.

Q. By what mark do you recognize that as the same land?

A. It is the same upon which I placed stakes.

Q. Were your stakes placed in the same position as the stakes indicated on this map?

A. Yes.

Fianza testified that he pointed out to the surveyor the boundaries indicated by the posts and designated on the plan, and added that they were the same boundaries which were shown to him by his father.

It is therefore well established by the evidence that Holman's claim related to well known mines and that these are
349 the same mines which are now claimed by the plaintiffs. Nearly every witness interested in mining presented by the defense, upon arrival in Benguet went at once to Antamoc and made inquiries about these precise mines, and Kelly, Reavis himself, and Knauber saw Holman, apparently for the purpose of making some contract with him in reference thereto.

The defendant relies very much upon the testimony of certain American miners who at the time of the trial had been in the country about three years, and who undertook to testify as to the mining customs of the Igorrotes, saying that they mined one day in one place and that if they found no gold they mined somewhere else, and that they never made any claim to the exclusive ownership of any tract of land. All of these witnesses had mining claims similar to that of Reavis. The claim of Clyde adjoins that of Reavis. It is to be observed that in their testimony they made no reference to this particular tract of land. They did not say that as to this particular tract of land there never had been any claim made by an Igorrote to exclusive ownership. But in no event could this general testimony overcome the positive testimony of the plaintiffs' witnesses, many having been presented who testified that the land was worked exclusively by Fianza and his ancestors, and that other people were kept off.

Fianza's statement, quoted by the appellant, to the effect that "our custom is if we do not find gold in one fathom or two fathoms, we make another place until we do find something" is entirely consistent with his claim to the exclusive ownership of this property. The fact that he and his ancestors moved around and dug holes in different places upon this property appears from the evidence. The witnesses testified that on the property there were a great many excavations.

The property in question being certain, well-known and
350 well-defined mines, the next question is, did the plaintiffs and their ancestors have the exclusive possession and control of the same. The testimony of the plaintiffs' witnesses is positive and direct that Toctoc and Dominguez worked these mines and that no one else did, and that since the death of Dominguez, Fianza has worked them in the same way. The defendant claims, however, that this possession has been interrupted. The first interruption relied upon, apparently, is what was done by Vicente Carrera in 1896, but it is apparent from the testimony of Carrera, already quoted, that whatever he might have done in relation to filing papers in the governmental office at Baguio, he never did anything upon the land itself. The building of his trail, one meter wide, up to the mines

could in no sense be called an interruption of the possession of Fianza, and his associates. It was a mere casual trespass.

Neither did the claim of Holman interrupt this possession of the plaintiffs. He never obtained any concession from the Government. None of the acts required by the law then in force were done by him except perhaps the presentation of one paper in the office at Baguio, and the payment of certain fees. Under the said laws, these acts could not in any way interrupt the possession then held by Fianza. If in pursuance of this attempt he had actually entered upon the land and had ousted Fianza and kept the possession himself, it might be claimed that there had been an interruption of the latter's possession, but his own evidence shows that nothing of that kind was ever done. The only thing which he did do was to survey the land and place stakes thereon. This act was not an interruption of the possession of Fianza. Balpiedad *vs.* Insular Government, 4 Off. Gaz. No. 23. Just what Holman did appears from his own testimony. He said:

351 Q. Did you buy these gold mines from the Igorrotes or anyone else?

A. No; I only denounced to the Spanish Government.

* * * * * * *

Q. What is the reason you did not continue your *denuncia?*

A. "Dead." I was afraid. I left that mine because I am not a miner.

Q. Was it in 1898 or 1899 when you quit the mines then?

A. No, I didn't work the mines. I didn't care to. I only bought the gold.

Q. Did you ever hire any work done on these mines?

A. No, no one.

Q. Did anyone pay for the work for you?

A. They worked for me. I didn't pay for their work, but the gold.

Q. In what capacity did you make contract with the Igorrotes to work these mines?

A. I didn't make any contracts.

Q. Didn't I understand you to say that you made contracts with certain Igorrotes to mine there and they gave you a certain part of the gold as owner of the mine?

A. No.

Q. Did you have any contracts with the Igorrotes at all?

A. No.

Q. I mean after you denounced the mines at Antamoc?

A. Yes; I told the Igorrotes that were working there that they must give the gold to me and not sell to any other one. That was the contract."

352 It is very clear that these acts constitute no interruption of the possession of Fianza. And so Fianza's possession continued up to the time of Reavis. Reavis entered upon the land and staked the claims in March, 1901. Fianza at once protested to Governor Whitmarsh. Governor Whitmarsh testified that Fianza "came and said that some American had taken up property

which he claimed and he wanted me to throw the American off. I told him, as far as I knew, there was no law under which he could do anything at that time and I advised him to put the matter off until something more definite was provided. At that time I was the governor under the Civil Government and very little was done under the laws."

Whitmarsh having refused to do anything, when Governor Pack arrived Fianza in 1902 made a written protest to him. Reavis was summoned before the Governor, a hearing was had and an agreement was made as stated in the findings of the court.

On the 9th of May, 1902, Fianza's claim was staked by Wagner, who testified that he found there old stakes, evidently those of Holman's, and Wagner then made out for Fianza a written claim to the mines, which was filed in Baguio. Fianza posted a notice on the property, which Reavis tore down and broke to pieces.

While Reavis says in several places that none of the Igorrotes made any protest, yet having testified that he did not know the Igorrote language, he was asked:

Q. Then, if you couldn't understand him, you didn't know whether he ever protested to you about the Igorrote mines which you claim.

A. I think he did. Yes."

That Fianza and his associates were in possession of the mines in 1901, 1902 and 1903 is proved by the fact that during
353 those years they took therefrom gold to the amount indicated in the findings of the court in that respect. We have not been able to find any evidence to the effect that Reavis took any gold at all from this property during those years. The work that Reavis did was evidently that which he thought was required by the law. Most of it appears from the evidence to have been done on the claim called "Otek," which is outside of the boundaries of the plaintiff's claim. The fact that some of the Igorrotes worked for Reavis is not important because that work might have been, and probably was done, upon the claim "Otek" upon which was situated Reavis' house, and where as said before the principal part of his work was done.

A great many witnesses for the defendant testified that they had talked with Fianza and that he did not make any claim to this land, and said that it was Holman's. Evidence of these admissions is not sufficient to show that the finding of the court below as to plaintiff's ownership is plainly and manifestly against the weight of the evidence. Fianza denied the making of such admissions. Most of the witnesses did not speak or understand Igorrote, and under such circumstances no great weight can be given to such alleged admissions. For example, Reavis testified:

"Q. If you don't know his language and he doesn't know yours, how then could you understand him.

A. I believe that a man can understand a word or two. It would seem to me that he could explain it by saying 'vamoose' or something like that and I could understand it."

354 The essential findings of facts made by the court below being sustained by the evidence, it remains to consider what, in view of such facts are the legal rights of the parties.

Neither the plaintiffs nor the defendant ever acquired any title to this property by virtue of the provisions of the Spanish law. It was, therefore, at the time the Islands were ceded to the United States, public property, and these lands are public lands to which the provisions of the Act of Congress of July first, 1902 are applicable. (32 U. S. Statutes at Large, 691.)

Section 45 of that Act is as follows:

"SEC. 45. That where such person or association, they and their grantors have held and worked their claims for a period equal to the time prescribed by the statute of limitations of the Philippine Islands, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this Act, in the absence of any adverse claim; but nothing in this Act shall be deemed to impair any lien which may have attached in any way whatever prior to the issuance of a patent."

This is the provision of law upon which the court below decided the case in favor of the plaintiffs. This view of that court must, in our opinion, be sustained. The statute of limitations of the Philippine Islands in force on July first, 1902, was ten years. According to the evidence and the findings, the plaintiffs had held and worked these claims for more than that length of time prior to the first day of July, 1902. They had for more than forty years prior to that date been in the possession thereof. That possession had
355 been open, notorious, continuous and under a claim of ownership.

That possession has not been interrupted. It is certain that neither Carrera nor Holman nor Reavis ever dispossessed the plaintiffs. They remained in possession and worked these mines during all the years 1901, 1902, and 1903 while Reavis was in Antamoc. Whatever he did upon the land was done while the plaintiffs still remained in the actual possession thereof. As before stated, the court found that Reavis' only possession was when he entered on the land from time to time to do assessment and development work, and his possession for such purposes was maintained by threats and intimidation, and against the protests of the plaintiffs.

It is claimed by the appellant that the plaintiffs are not entitled to the benefit of this Section 45 because they made no location of the property ten years before the passing of the Act. We do not understand that such a location is required by the terms of that section. In the case of Belk *vs.* Meagher, 104 U. S. 279, the court said, at page 287:

"Under the provisions of the Revised Statutes relied on, Belk could not get a patent for the claim he attempted to locate unless he secured what is here made the equivalent of a valid location by actually holding and working for the requisite time."

Whether the Act of Congress of July first, 1902, took effect in these Islands at the time it was signed by the President (Gardner *vs.* The Collector, 6 Wall. 499) or when it was promulgated, it is not

necessary to determine, for in either case the right of the plaintiffs was fixed by that Act before Reavis, in October, 1902, took any proceedings thereunder. When the Act took effect the plaintiffs became entitled to a patent thereto from the Government.

356 It is suggested by the defendant that section 45 does not apply because it relates to cases in which there is no adverse claim, and that in the present case there exists the adverse claim of Reavis. It is evident that if a person is otherwise entitled to a tract of land in accordance with the provisions of said section 45, his right can not be taken away by the mere fact that some other person makes a claim adverse to his. If such were the construction to be placed upon the section, its object might be entirely defeated, for in every case adverse claims, entirely unfounded, could be presented for that purpose only. It is plain that that provision in article 45 indicates merely that the proceedings for the delivery of the patent shall be delayed until the validity of the adverse claim is determined in the courts of justice. When locations are regularly made under the Act and adverse claims are filed thereto, section 59 provides that all proceedings "shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction or the adverse claim waived." The provisions of section 39 undoubtedly are in this respect applicable to such adverse claim as is mentioned in section 45.

It appears from the evidence and the findings of the court that sometime in the Spring of 1901, four or five American miners living in Benguet undertook to establish the "Antamoc Mining District," and to appoint a Mining Recorder. With this Mining Recorder Reavis filed certain locations on a part of the property in question. These steps were taken and these proceedings were had in accordance with what the organizers of this District thought to be the laws in force in the United States in regard to mines.

357 These laws were not in force in the Philippine Islands at that time and the proceedings of the persons who thus organized the "Antamoc Mining District" were entirely null and void.

The locations made by Reavis in accordance with the Act of Congress of July first, 1902, were not made until October of that year. They were made after the rights of the plaintiffs had become vested in accordance with the provisions of said section 45, and therefore such locations can not prejudice the plaintiffs. The court below held that even these locations were invalid in accordance with the said Act. It is not necessary, however, to determine this question.

The judgment of the court below is affirmed, with the costs of this instance against the appellant.

358 (Case No. 2940.)

TRACEY, *Dissenting:*

Since the writing of the two principal opinions in this case and since the signing of the prevailing opinion by a majority of the Court, but before it was filed or the decision was entered thereon, the

Philippine Commision in Act 1596 apparently did away with the rule in the de la Rama case and made it our duty to review the evidence and retry the questions of fact, even where the judgment of the Court of First Instance is not plainly and manifestly against the weight of the evidence.

Read anew, without regard to the findings of the trial judge except in so far as they are founded upon his view of the witnesses, I do not think that all the testimony before us establishes such a holding and working of any property identified with that described in the complaint, as constitutes a possession thereof under section 45 of the Act of Congress of July 1st, 1902, entitling the plaintiff to a patent thereon. The plaintiff occupying the property claimed by him, immediately prior to the commencement of the action, had in his power to describe in detail the condition of the workings on the land and narrate his own acts in relation thereto. Upon him rested the burthen of proof on this important point, so hotly contested on the trial, and on him, rather than on his adversary, should fall the consequences of the lack of decisive and satisfactory evidence in relation to it.

For this reason only I feel constrained to dissent from the opinion of the majority.

(Signed) JAMES F. TRACEY.

359 (*Case No.* 2940. *Dissenting Opinion.*)

JOHNSON, *J.*:

This was an action begun in the Court of First Instance of the Province of Benguet by the plaintiff for the purpose of enjoining, restricting and inhibiting the defendant from entering upon two certain gold mines lying and being in the Barrio of Antamok, in the township of Itogon, Province of Benguet; *no certain description of said mines could be given* at the time of the commencement of the action according to the complaint of the plaintiff.

Upon the filing of the complaint the court granted a temporary injunction to prevent the defendant from entering upon this indefinite, unlocated, indescribable tract or parcel of land. By computation it was found that this indefinite, unlocated parallelogram contained about seventy thousand square meters. After the beginning of the trial of said cause, the plaintiff caused a survey of the alleged mines to be made by one, Balpiedad; the result of said survey is represented said Exhibit "C," presented in evidence by the plaintiff, which represents the parallelogram or mines to be in the following form:

(Here follows diagram marked p. 360.)

Plaintiff Exhibit "C"

Croquis de las dos Minas de Jose Fianza en Ampasit y Antamoc del barrio Antamoc, Ictogon.

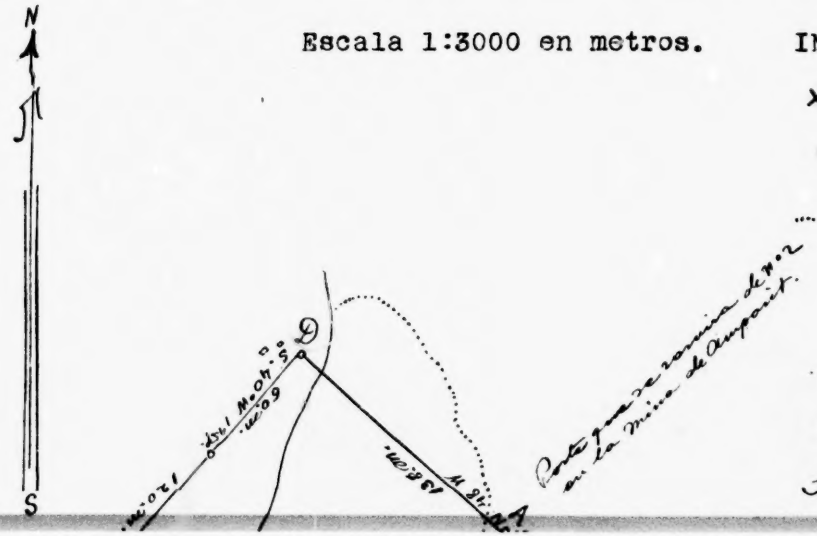
Escala 1:3000 en metros.

INDICACIONES:

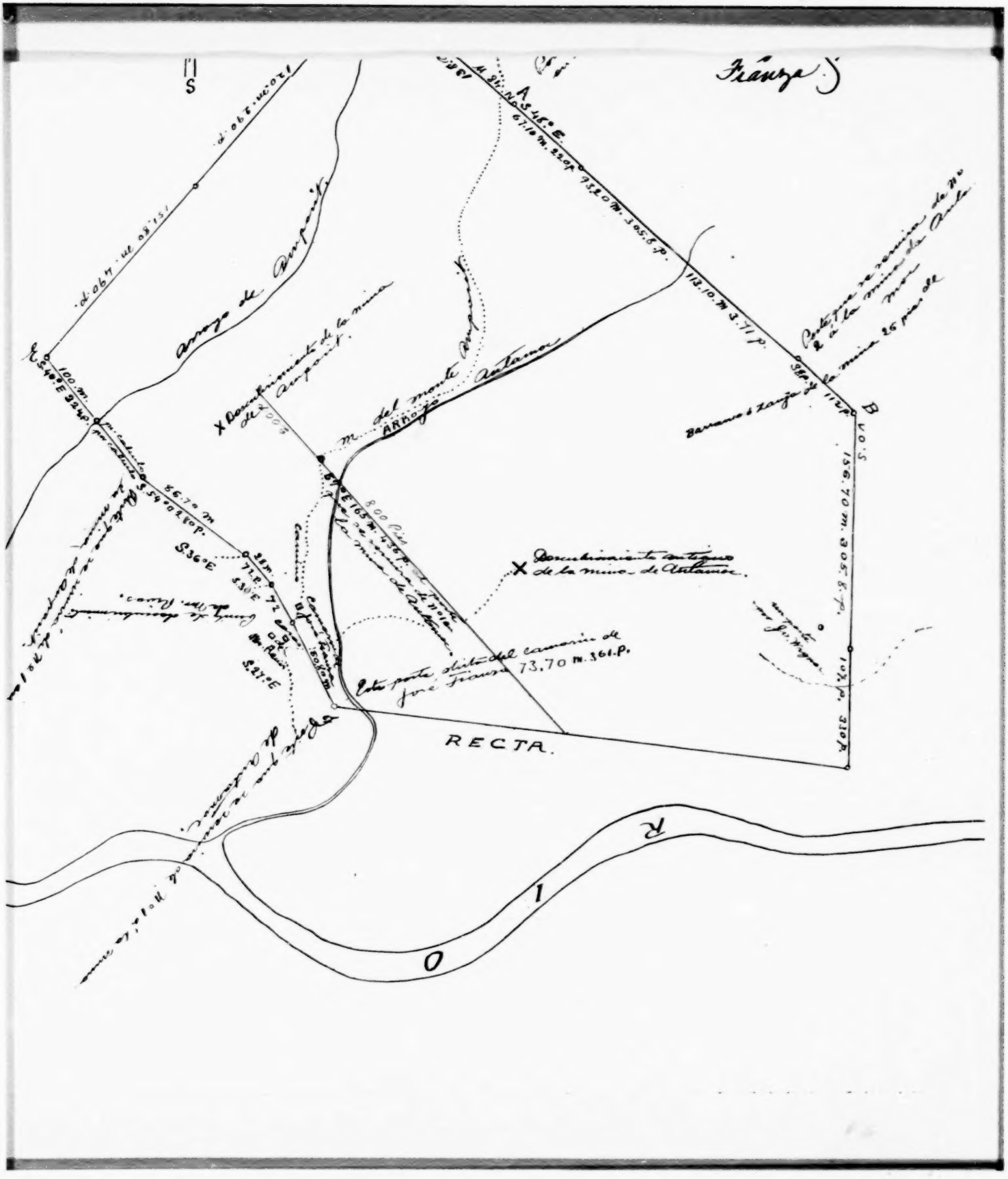
× Descubrimiento.

∘ Postes.

..... Camino.



No. 183.
Riaño
v.
Fianza
} f. 360


Arroyo de Arapanic
Arroyo del monte Cantamar
Camino Real
RECTA.
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1



361 & 362 This exhibit or survey, showing the limits of said land in question was not completed, or offered in evidence until after practically all of the witnesses for the plaintiff had been examined. After the admission of the said exhibit, the plaintiff asked that he be allowed to amend his pleadings to conform to said exhibit, which request was granted.

The court in its decision found that the land included in the said "Exhibit C," was the land in dispute, was of irregular boundaries, contained about 183,000 square meters, was situated on the slope of a mountain called "Antamok Mountain," and under the statute of limitations, Act of Congress of July 1, 1902, that the *Government of the Philippine Islands holds the title in trust for the plaintiff;*" thereby holding that the title to this indefinite, irregular tract of land, somewhere on the mountain, poorly described, was being held by the Government of the Philippine Islands for the plaintiffs.

The plaintiffs alleged, in their petition, that "they their fathers, and his father and his grandfather had worked said mines for many years."

We have, therefore, the following conditions:

1st. That the plaintiffs, their fathers and grandfathers had been in possession of the land for *many* years, the *exact number being unknown*, of a parcel of lands or mines, which at the *beginning of the action could not be definitely described.*

363 2nd. That in the attempt to describe it, it was designated as a parallelogram containing about seventy thousand square meters.

3rd. That the lower court at the *beginning of the action* enjoined the defendant from entering upon the tract of land *not located* nor *described*, and admittedly a tract which could not be *definitely located or described.*

4th. That the lower court, at the conclusion of the trial, made such temporary injunction, perpetual, after it had been clearly proved that the land referred to in the first injunction was not the same land which the plaintiff claimed in said "Exhibit C."

5th. That the plaintiff, at the beginning of the action, was not the owner of the said tract of land, but that the same belonged to the government of the Philippine Islands and was being held in trust by said Government for the plaintiff.

6th. That they were unable to definitely locate the lines of said mines until after the beginning of the trial of said cause, and when it was definitely described it was not a parallelogram, and contained nearly three times as much area as that described in the petition of the plaintiffs. It would seem but reasonable to believe that if the plaintiffs, their fathers and grandfathers had been in the possession of a definite, well-known tract or parcel of land for so many years, *to the exclusion of all other persons whomsoever;* its limits might in some way have been definitely described, or at least it might have been described in a way to have included more than one-third

364 of a tract of land which 'they, their fathers and grandfathers" had occupied for many years to the exclusion of all other persons.

We assert in the beginning that these facts lend suspicion to the exclusive right of the plaintiffs to any well defined tract of land. We also are of the opinion that until it is proved (*a*) *that the plaintiffs have an absolute and exclusive right to a particular tract of land;* and (*b*) *that said tract of land has well defined meets and bounds*, the court had no right or authority to issue an injunction prohibiting or restraining the defendant from entering thereon. The court had no authority to issue an injunction to prevent the defendant from entering upon any parcel of land until that parcel of land was well defined by *meets* and bounds, for otherwise the defendant would be unable to know when or how or in what manner he would be violating such injunction.

It will be noted that upon the filing of the petition of the plaintiffs herein, when the petition upon its face alleged that *no particular description of the mines in question could be given*, the court *enjoined* the defendant from entering thereon. Entering upon what lands? Lands somewhere in the Province of Benguet—somewhere on the mountain called Antamok. This temporary injunction at the conclusion of the trial was made perpetual.

After the decision was rendered, the defendant, through his attorneys, made a motion for a new trial, basing the same upon the following reasons:

365 1. *That the findings of fact were openly and manifestly against the weight of the evidence.*

2. That the evidence was insufficient to justify the decision.

3. That the decision and judgment of the Court were against the law.

This motion for a new trial was denied.

This motion for a new trial being based expressly upon the provisions of paragraph 3 of Article 397 of the Code of Procedure in civil actions, we are justified in examining the evidence for the purpose of ascertaining whether or not the conclusions of the lower court were justified by such evidence. We therefore propose to examine the evidence adduced during the trial of said cause upon each of the respective questions of fact presented, and allow the record to speak for itself.

Our *first* proposition is that neither the plaintiffs nor their predecessors occupied any definite piece or parcel of land or mines in the Province of Benguet or elsewhere for any period, to the exclusion of all other persons; that the plaintiffs and their predecessors were Igorotes; that they lived in tribes much as the American Indians did; that they never asserted their rights to any well defined parcel of land nor occupied any well defined parcel of land to the exclusion of other persons, either strangers, or members of the particular tribe.

Upon this proposition we refer to the record for the answer.

366 The petition alleges that the said mines are in the barrio of Antamok. What is Antamok?

Madarang (Igorote) said (record, page 18):

"The whole mountain is known as Antamok."

Bisguey (Igorote) and one of the plaintiffs said: (record, page 21)

in answer to the question "What is Antamok?" "it is a barrio, and is a place called by the name of Antamok."

On page 22, the same witness in reply to the question: "Are the *barrios* of *Tecop, Ampassit* and *Antamok*, situated in the mountain called 'Antamok'?" said, "Yes sir."

Emigdio Octaviano said: (record, page 27)

"He knew the place called Antamok."

Mateo Cariño (Igorote) said, (record, page 27)

"That Antamok was a mountain and that there is a place called Ampassit, Antamok, Ning and Loacan."

From the foregoing testimony of the witnesses, all of whom resided in the vicinity of the land in question, it appears clearly that Antamok was a mountain; therefore any description of a parcel of land described simply as being in Antamok would certainly be too indefinite and uncertain upon which to grant an injunction to prevent trespass upon such undefined parcel of land.

With reference to the *exact location* of said mines in said mountain, we have the following proof in the record:

Jose Fianza (Igorote and one of the plaintiffs) said: (record, page 2) in answer to the question "Where were those mines?"

"They were in Antamok and Ampassit."

367 The same witness further said: (record, page 7) that

"Wagner, (Governor Pack's clerk) put in the stakes where his (Fianza's) claims were."

With reference to the specific and exact location of the land in question, the said Wagner (Record, page 65) testified as follows:

Q. Who indicated to you the place where the posts you have referred to, should be put?

A. Fianza.

Q. Did he name these posts to you as the boundary or boundaries of his claim or claims?

A. If I remember correctly it was the boundaries of his claim—a single claim. I asked him when he first started out if that was his boundary and he told me 'yes.' Now, whether he was including any one claim or claims I cannot say.

Q. To the best of your remembrance were these dimensions the correct ones as shown by Fianza?

A. Approximately, yes.

Mr. Wagner further stated that the claims pointed out to him by Fianza, and as staked out by him, were approximately 15000 feet by 600 feet. (Record, page 65.)

As to the posts on the claim placed by Mr. Wagner, he, (Wagner) made the following statement: (Record, page 64):

"From the post No. 1 or 2, I don't remember which, we proceeded to the post on the north center part of the claim, thence to the post on the north-eastern corner, and thence to the post on the southern corner."

Mr. Wagner further says: (record, page 67) in answer to the question as to the particular posts, he, (Wagner) placed upon said claims:

Q. *There were four posts there then?*"

A. Yes sir.

As to this Wagner survey, therefore, from the record the following facts appear:

The said survey was made on the 9th of May, 1902; it was of the mines as claimed by Fianza; said claim was marked by four posts and the claim was approximately 1500 feet by 600 feet.

It further appears from the testimony of Wagner that he changed his plans after it was made; (record, page 68) which plan, it will be noted, was not made a part of the record.

368 Madarong, (Igorote) in speaking of the specific location of the mines in question, said: (record, page 16)

"That Dominguez (father of one of the plaintiffs) had mines in Itogon and in Antamok." And (record, page 18)

"That the whole mountain was considered mineral lands."

Bisguey (Igorote and one of the plaintiffs) said (record, page 20) referring to the exact location of the mines in question:

"That her father, Toto, owned mines in Antamok," without any further or definite description.

Picarte (Igorote) said (record, page 25)

"That he knew by reference that Dominguez claimed to be the owner of some mines called Antamok and Ampassit."

It will be noted, that is hearsay simply.

Emigdio Octaviano said (Record, page 27) that "He knew the place called Antamok and that there were mines there; and that (record, page 28) he had heard from a man called Caballas, that Dominguez claimed said mines; and that (record, page 29) he did not know anything as to their extent."

Juan Cariño (Igorote) said, in reply to the question, (record, page 34) "Do you know whether these mines were the private property of Dominguez or whether he only held them for other people?" "I only heard that Dominguez was the owner of these mines and I never heard that he had any associates in the mines with

369 him." Hearsay again.

The same witness further said that the holes were in the mountain called Antamok and that Dominguez had holes in three places in the mountain called Antamok.

Chap-Day, Balbadines, Maimpis, Lorenzo, Pasio, Tongapel, Tongay, Cateb and Bitabio, all Igorrotes, testified (record, pages 40, 43; 45, 50, 52, 53, 55, 56 and 57) that Dominguez had mines in Antamok," without any further description.

Amey (Igorote) one of the plaintiffs, said, (record, page 47) "that her father, Toto, had mines in Antamok, without any further description.

It will be noted that none of these witnesses, except Wagner, (and he simply placed the stakes according to the direction of Fianza, one of the plaintiffs,) in any way *attempted to more definitely describe the lands in question than to say that they were in the mountain of Antamok.* It is contended that even Wagner's description does not definitely locate any land. He does not state that said tract was on one side or the other of said mountain. His description has neither starting point nor end.

FIANZA, one of the plaintiffs, with reference to the definite location of the mines in question, testified as follows (record, page 7):

Q. Did Mr. Wagner measure the claim?
A. Yes, sir.
Q. Did he put in the stakes?
A. Yes, sir; he placed those pine stakes or posts.
Q. Did you go with Mr. Wagner?
A. Yes, sir.
370 Q. *Did you show him where your claims are?*
A. *Yes, sir.*
Q. *And he put the stakes in as you showed us this morning here and marked the place?*
A. Yes, sir.

It will be remembered that Wagner placed four stakes only.

Bearing in mind that the measurements, made by Wagner, were made on the 9th of May, 1902, and that said posts included a parcel or tract of land in the form of a parallelogram, 1500 by 600 feet in a mountain somewhere without beginning or end; that the preliminary injunction was granted by the Court on the 18th day of January, 1904, to prevent the plaintiff from entering upon this unknown tract of land, a description of which could not at that time be made, and that the Balpiedad survey (Exhibit C) was made February 10th, 1904, we quote the testimony of the said Balpiedad for the purpose of ascertaining whether or not the land claimed by Fianza at the time that Wagner made a survey of the same was the same land which he (Fianza) claimed nearly two years later, at the time the said Balpiedad made his survey.

BALPIEDAD, a witness, testified as follows (record, page 73):

Q. Have you made a plan showing the measurements and boundaries of the mines claimed by José Fianza, in the barrio of Antamok?
A. Yes; I made a sketch plan, except I have not run out the boundaries, lines, they being direct lines from post to post.
Q. When did you make this measurement?
A. During the month of February * * * It was on the 10th of February, 1904.
Q. I present you a plan marked "Plaintiff's Exhibit C," and ask you if it is the plan you have referred to?
A. Yes, sir.
371 Q. *Who showed you the lands and measurements and corners to make this measurement and plan?*
A. *José Fianza.*
Q. *How many posts did you find there?*
A. *Fourteen posts* in addition to some posts that were inside and outside posts of Mr. Reavis which didn't appear in the plan.

The COURT (Page 74):

Q. *How many of these posts did you find on the boundary line?*
A. *Fourteen posts.*
Q. How many of these posts were marked in any way?

A. Some of the posts that I saw were marked with the name of José Fianza.

Q. How many had his name?

A. *I know there was one.*

Q. How did the lines pass through the posts—*did you run a line from one post to another?*

A. *Yes, sir;* the line ran exactly from one corner post to the other, to the interim post made solely for a line.

Q. *How many of these posts* (record, page 83) which you refer to, *did you place there?*

A. *I did not place a single post.*

Q. They were already there when you got there, were they?

A. Yes, sir; according to what Fianza said they had been there a long time—for some time.

372 It will be noted that prior to the Wagner survey (May 9, 1903), according to the testimony of Fianza, *no attempt had ever been made by him or his predecessors in any way to definitely mark out the mines which the plaintiffs claim.* It must be remembered also that Wagner placed four posts including a parcel of land in the form of a parallelogram.

Balpiedad, at the time of his survey, (February 10th, 1904) found fourteen posts and the form of the parcel of land included in his survey is seen by reference to "Exhibit C," which is not a parallelogram. He found fourteen posts instead of four. By reference to the testimony of Fianza and Balpiedad it will be seen that these two witnesses attempted to make it appear that the survey, made by the latter, was simply a measurement from post to post set by Wagner. This testimony cannot be believed for the reasons:

(*a*) That Wagner placed but four posts and Balpiedad's measurement included fourteen posts; and

(*b*) That in said "Exhibit C," presented by the plaintiff it will be noticed in the lower right hand corner of the same that one of the posts placed by Wagner was *within* and *not on the lines* of the boundaries of the land surveyed by Balpiedad. This latter fact alone would seem to be proof positive *that the land* which Fianza, one of the plaintiffs, *claimed in May, 1902, was not the same land claimed by him in February, 1904.*

The fact is further demonstrated by the appearance of the fourteen posts represented in "Exhibit C," and the one post in the lower right hand corner of said "Exhibit C," that between the months of

373 May, 1902 and February, 1904, the plaintiffs had made up their minds to include a different and larger portion of the said mountain of Antamok.

It is apparent also from this same testimony that in the interim the four posts placed by Wagner had been increased, in number by some interested party so as to include nearly three times the original claim as well as to change the configuration of the land claimed by the plaintiffs.

One can not read the record in this case without reaching the conclusion that Fianza is in fact the only one of the plaintiffs who has any interest in the land in question, or without reaching the con-

clusion that he is a sort of a chief of that particular tribe of Igorotes. From his testimony he is put in the *position of claiming in May*, 1902, without any *opposition or interference from any one*, a *particular tract* of land in the form of a parallelogram, and *in February, 1904, two years later, of claiming another and larger portion of land and in a different form.* Is this testimony and this claim conformable to the claim of the plaintiffs that they, their fathers and grandfathers had been in possession of a distinct, well-defined parcel or tract of land anywhere, to the exclusion of all other persons?

The claim by the plaintiff, Fianza and Balpiedad that the post marking the perimeter of the lands in "Exhibit C" marked the boundaries of the land originally claimed by Fianza, is in direct conflict with the testimony of Mr. Wagner.

With reference to these posts we have the testimony also of Mr. Reavis, the defendant, who had lived in the vicinity of An-
374 tamok from the month of February, 1901. He said (record, page 90) in answer to a question with reference to the time when the fourteen posts were placed upon the land represented by "Exhibit C": *"They represent stakes set in the ground after the injunction was served on me in this case."*

Q. Do you know who put them there?

A. *Fianza told me that he put them there.*

Q. *This was after the injunction was served upon you?*

A. *Yes sir.*

Q. Was there any survey made of that land? If so, when?

A. A short time after the post was there Fianza came there with a Filipino surveyor and had him to go round these posts. It is the same surveyor who came on the stand here and testified and the same one who made the plat on the paper.

Q. Were these the stakes referred to by witnesses as the fourteen stakes pointed out to you by Wagner, Lawrence and Fianza, were these stakes there before the injunction was filed?

A. Not that I saw.

Q. Were you around the land so as to see them if they had been there?

A. Yes sir.

Q. So when Wagner placed these posts there in 1902, did you see them up to three days ago when they went to them

A. They were not there.

Q. Did you see any stakes that Wagner testified to as having been placed there by him on the 9th of May, 1902?

375 A. Yes sir; when we went over there I saw them, about three days ago.

Q. How many did he show you that he had placed there?

A. He showed me one that he was positive of having placed there.

This testimony, together with that of Fianza, Balpiedad and Wagner, seems to make it clear beyond peradventure of doubt that the land claimed in "Exhibit C" is not the land which Fianza pointed out to Wagner as his land in the month of May, 1902.

It will be remembered that all of the witnesses of the plaintiff who attempted in any way to designate a particular tract of land, *gave*

their testimony before the Balpiedad survey was offered in evidence, and none of them made a more definite or special description of the land in question than to say that the said land was in the mountain of Antamok. The only testimony, therefore, which attempts in any way to describe the particular land in question is that of Fianza, Balpiedad and Wagner, and it must be remembered that Wagner and Balpiedad each received whatever information they had concerning the identity of the land in question from Fianza himself.

R-ferring again to the testimony of Fianza and to the fourteen posts as marking the perimeter of the land in question, he testified (record page 84) that such boundaries are the same as the
376 land which his father owned. This same witness also stated (record, page 7) that the four posts placed by Wagner on the 9th of May, 1902, marked the perimeter of his claim.

Neither will it be forgotten that according to the finding of the Court the Balpiedad survey included nearly three times the area which the Wagner plan included. The Wagner plan was a parallelogram; the Balpiedad plan is octagonal in form, four of whose dimensions are 1542, 1075, 8887 and 742 feet, one side being without any dimensions whatsoever. *These surveys represented entirely different tracts of land, both sworn to by the plaintiff Fianza as representing his mines.* Which of these contradictory statements must the Court accept?

When it appeared during the trial of said cause that the tract of land marked by Wagner and that surveyed by Balpiedad were different tracts of land, the attorney for the defendant attempted to ascertain which of the two tracts the plaintiff Fianza actually claimed and to that end asked the following question:

Q. *What mines do you claim? That which you claim by this suit* (Wagner's plan) *or that which was measured by Balpiedad?*" Apparently, in view of the conflict between the lands pointed out by Fianza to Wagner and the lands pointed out to Balpiedad, a
377 perfectly proper question, and one which had the plaintiff been permitted to answer, might have made clear this conflict. However, the attorney for the plaintiff objected to the question and the Court refused to allow Fianza to answer the same.

The trial court and the majority opinion in this court for some reason have accepted the Balpiedad plan as representing the mines claimed by the plaintiffs. The fact is to be clearly borne in mind that *all* of plaintiffs' witnesses, with the exception of Fianza who *pretended to testify* as to the mine claimed by Dominguez and Fianza, testified before the Balpiedad plan was presented. Aside from the fact that their declarations refer to mines in Antamok, such declarations could not, under any theory of the case, *serve to identify the tract described in the Balpiedad survey.*

As to Fianza himself he pretended to identify the land claimed by his father with the Balpiedad survey. We have already noted that there is a hopeless conflict in his statements, as he identifies in one place the Wagner plan and in another place the Balpiedad plan as being the land claimed. And moreover, in view of the testimony of Wagner and Reavis, we are of the opinion that Fianza *deliberately*

perjured himself (record, page 85) in testifying that the posts appearing on the Balpiedad plan were placed there by Wagner. *He admitted to Reavis that he had placed the posts there himself.*

We feel justified in the conclusion, therefore, that the only testimony in the whole record identifying the lands claimed by the plaintiffs with the land decreed by the Court is the following
378 question and answer; asked of Fianza (record, page 84).

"Q. Were the boundaries that you showed Balpiedad the same that were the boundaries of the land when your father owned it?"

"A. Yes sir; the boundaries were the same father showed me."

If it is true that the father of Fianza had shown the boundaries of the Balpiedad plan to him and these were the real boundaries of his claim, why did not he, Fianza, point out these same boundaries to Wagner in May, 1902, nearly two years prior to the Balpiedad survey?

It results, therefore, that the decision is rendered in favor of the plaintiffs upon the testimony of one witness whose declarations are conflicting and who has deliberately perjured himself.

It is contended further that even accepting "Exhibit C" as representing the lands in question, even then the *demarcation of a tract of land is not sufficient upon which to issue an injunction to prevent trespass.* There is nothing in the description of the lands marked in "Exhibit C" by which even a surveyor might go upon that part of the *world* and locate it exactly, so as to be able to say to all comers this is the particular tract of land of the defendant and all others are enjoined from entering thereon.

It is contended that "Exhibit C" does not constitute a sufficient description to locate this property. The plan itself is not accompanied by a technical description of any kind; the only description
379 appears in the testimony of Balpiedad (record, page 74 to 78). The vital point in any plan is the starting point. The only evidence of record showing the starting point of this plan is as follows: (record, page 74).

Q. Where did you commence the measurements?

A. We followed the Ampassit road and started from the post we found near that road, within a distance of ten meters of the side of the road towards the summit of the mountain.

Q. Can you describe more specifically the point of departure?

A. Yes sir.

Q. Well, describe it then.

A. This post is held in place by stones piled about its base, and if it has not been removed there is another post longer, which Fianza placed there so that it could be seen from a distance.

No surveyor, much less a layman, could locate with certainty the starting point from this description.

It appears further that the notes from which this plan (Exhibit C) was made and testimony given, were not the original notes. The following appears of record: (record, page 80).

"Q. Why did you destroy the data which you made in this particu-

lar case when it was your custom to keep all data within your trunk?

380 "A. Because these were not proper and besides they were all transferred to this paper and therefore I tore them up."

From this it expressly appears by the testimony of Balpiedad, that the notes which he made on the ground at the time of the survey "*were not proper*" and that these (improper notes) were all transferred to this paper. We must conclude then, that even "Exhibit C", according to the testimony of Balpiedad, himself, (record, page 84) is not a correct plan. Both the trial court and the majority opinion of this court found that the tract owned by Fianza is of irregular boundaries and contains about 183,000 square meters. There is not a scintilla of evidence in the record giving even approximately the area of "Exhibit C".

We are of the opinion that the foregoing excerpts from the record clearly show that the plaintiffs failed to prove that they occupied *for any period*, any well-defined, ascertainable tract of land in the mountain of Antamok, to the exclusion of all other persons. The testimony of all of the witnesses for the plaintiff, except Fianza himself, refers to the land in question simply as *the mines of Antamok*. Several witnesses testified that Antamok was a mountain and that the whole mountain was known as Antamok and that all the land in said mountain was mineral land.

It being clearly established, therefore, that Antamok is a mountain and is mineral land, a declaration that Dominguez or Fianza claimed mines in Antamok, no more identifies the location of

381 such mines with the particular mines now claimed by the plaintiffs, than would, a declaration that "John Doe" claimed mines in the mountains of China or in the gold fields of Colorado, authorize such "John Doe" to claim title to a particular mine within such district, or to receive the aid of the strong arm of the law to prevent all comers from entering upon any particular square foot of said land. There might be some reason for so holding if the particular tract of land claimed, constituted the only mines in Antamok; it appears, however, that the whole mountain of Antamok is mineral bearing, and that there are many mines there. Evidence that the plaintiffs claim mines "in Antamok" is absolutely no proof of owner-hip of any particular tract within the limits of said mountain. *If the plaintiffs can claim the lands described in "Exhibit C" today, to the exclusion of all other persons whomsoever, they can, under the same proof, contest the right of any other mine now open or hereafter to be opened in said mountain.*

It appears from the testimony that a Mr. Clyde, and other American miners also located claims in Antamok; some of them adjoining the alleged lands in dispute, while many witnesses testified that there are Igorote excavations over the whole of Antamok mountain. It is believed that if the plaintiff Fianza can claim this particular tract of land in question that he can then successfully contest the right of any locator of a mine in the mountain of Antamok, for the reason

that the testimony of all of the witnesses was that Fianza had mines in Antamok, with no further or more definite description.

382 The majority opinion (page 14) in referring to the testimony of the American miners as to the mining customs of the Igorotes, says:

"In no event could this general testimony overcome the positive testimony of plaintiffs' witnesses, many having been presented who testified that the land was worked exclusively by Fianza and his ancestors and that other people were kept off."

We have examined the record in vain to find even a shred of evidence supporting this statement. There is not a *scintilla of evidence* in the record which we have found *to show* that Fianza and his predecessors *ever kept anybody off* of this alleged tract of land or any other in the mountain of Antamok. Aside from the fact that these witnesses did not identify any land claimed in this suit, they did not state that Dominguez claimed the exclusive right of the land in Antamok, *or that he kept other people off*. They made their statements no stronger than that Dominguez "owned mines in Antamok," without saying whether such mines were in one part or another part of said mountain. The only evidence in the whole record which purports to identify the land claimed by the plaintiffs and their predecessors with that surveyed by Wagner and Balpiedad is the testimony of one witness, Fianza, an interested party, and it has been shown that he perjured himself.

Upon the question of the exclusive occupation by the plaintiffs of any particular tract of land, *it is confidently asserted that the plaintiff, Fianza, never attempted to exclude any one from the use and occupation of any portion not only of the small tract of land*

383 *here in question, but of any part of said mountain of Antamok*. We will allow the record to support this statement:

Mr. REAVIS testified:

Q. How long have you lived in Antamok?
A. Since February, 1901.
Q. When did you arrive in the Philippine Islands?
A. In 1900; I believe in December.
Q. What experience have you had as a prospector?
A. Now about ten years or a little more.
Q. In what part of the United States did you prospect?
A. In New Mexico principally, Arizona, Colorado, and along the Rio Grande River in Texas.
Q. When did you arrive in this province of Benguet?
A. I believe on the first of December, 1900—that is in Baguio.
Q. Did you go to Antamok?
A. Yes sir.
Q. Did you do any prospecting?
A. Yes sir.
Q. Where?
A. I commenced here and went to Bataan creek and I prospected the country all about.
Q. When did you arrive at Antamok?

A. February, 1901.

Q. What if anything did you do there in reference to prospecting?

A. I went over the country, broke up rocks and *and* looked

384 up in the gulches.

Q. Where?

A. All over the Antamok mountain and in the river and all about.

Q. Did you make any location?

A. Yes sir.

Q. Where?

A. In Antamok.

Q. What if anything did you do after locating claims at Antamok?

A. I located other claims, put up stakes, made out location papers, got them recorded by the recorder, Clyde, who lived in Antamok.

Q. How was he made recorder?

A. By election of the miners.

Q. Where?

A. In Antamok, what they called the Antamok district.

Q. Now Mr. Reavis, what claims were located by you in Ma..h, 1901; what were the names of the locations?

A. Arizona, Texas, Mexico, New Mexico, Otee and Apex.

Q. State to the court just what you did when you went to Antamok in the early part of 1901.

A. We went to Antamok and found ground which to my judgment was open for location; I put up my stakes; as I said before, I had them put on record and proceeded to do my assessment work as we would have done in the United States according to our rules.

385 Q. Was there any one about the place when you located?

A. Yes *sir*: Igorotes and some Americans on the river.

Q. Did you make any inquiry in regard to the land around there?

A. I learned when we went to the creek that it was all located on the west side of the creek and down to the land on the south side of the river and the prospectors all believed that the other side of the river was the ground and land owned by Mr. Holman.

Q. Was inquiries, if any, did you make of the natives that were there?

A. I made no inquiries of any of them, because I could not speak the language, but they told me voluntarily that that mountain belonged to Mr. Holman.

Q. Referring to what mountain?

A. Antamok mountain.

Q. Have you been in possession of the ground located by you in March, 1901, since that time?

A. Yes sir.

Q. Have you performed work thereon since that time continually?

A. Yes sir.

Q. State whether or not you employed natives to assist in the development?

A. Yes sir.

Q. How many?

A. All of the natives that were living around me at the time.

386 Q. Was there any objection made by any one to your possession and working of these claims?

A. None at all.

Q. When was the first objection, if any, made to your possessing and developing these claims?

A. The first objection coming directly to me was when I got a paper from Governor Pack to come into Baguio in 1902.

Q. *At any time prior to that date did the plaintiff Fianza, or any of them, in any manner, object to your possession of said claims or to your development of them?*

A. No sir.

Q. Did the plaintiff, Fianza, or any of the other plaintiffs ever inform you or give you any information that they claimed any part of the claims which you had located and were in possession of?

A. They did not.

Q. What stakes, if any, *were* upon the claims when you located them?

A. I found one small stake with "H. Holman, registered 1899" written in blue pencil, written on it.

Q. Did you find any other stakes?

A. I did not. The Igorote who showed me that one took me over to show me the others and when we got to where he said it was it was gone. He said that the fire had burned it up.

Q. Did you make a sufficient investigation of that ground to be able to state as to whether there were any other posts on that ground located by you?

A. I have been over the ground more thoroughly than any

387 Igorote ever did in his life and I never saw any stakes.

Q. These stakes were placed there by H. Holman?

A. Yes sir; from what the Igorote showed me it would indicate that the post I had come to was the south-west corner post of Holman's claim.

WILLIAM KNAUER, upon the question of the claim of Fianza to any particular tract of land in Antamok, says:

Q. What is your occupation?

A. Engineer.

Q. Did you follow your occupation there as a locomotive engineer?

A. Yes sir; but in Colorado I was mining most of the time.

Q. How many years' experience have you had in mining?

A. Five years.

Q. Were you ever in Benguet Province before?

A. Yes sir.

Q. When?

A. January, February and March, 1900.

Q. For what purpose?

A. Mining and prospecting.

Q. Do you know the mining district of Antamok?

A. Yes sir.
Q. Were you there?
A. Yes sir.
Q. When?
388 A. On the 9th day of January, 1900, at the Antamok mining claims.
Q. Did you do any prospecting?
A. Not to amount to anything; I was just looking around; that was all.
Q. Did you make any inquiries as to whether or not there were any mining claims in Antamok?
A. Yes sir; that is mostly what I went there for.
Q. How did you make the inquiries?
A. From the Presidente of Itogon.
Q. Do you remember the Presidente by name?
A. No sir.
Q. Do you know him by sight?
A. If I should see him.
Q. I will get you to look at José Fianza and get you to state if he was the Presidente of Itogon?
A. Yes sir; he is the man; he was supposed to be the Presidente; he went with us to the mining property.
Q. Who was with you at the time you were at Antamok inquiring for claims?
A. It was a Spaniard by the name of Theodoro Miguel. He had lived around in this country for nine years.
Q. What was said and done there? (Referring to the time when Fianza went with witness to the mining property).
A. The Spaniard and me went down to Itogon; we looked for the Presidente or some one who knew about this mining property, who it belonged to and who was supposed to own it. This man Fianza said he knew the property and knew it belonged to Mr. Hol-
389 man. I asked him where it was and if he would go with us; so we went up there with Fianza; I asked Fianza to show us Mr. Holman's stakes or lines; then he said 'Go over there further' and he pointed over the ravine and we went across the river and up to the top of the hill where the slide was and from up there he showed us the stake and pointed to other different points down the river; one was up near the river and another off a ways from the ravine which runs up the slide, as he pointed north or north-east to the different stakes there; then I asked him if Mr. Holman was supposed to own all this property as a mining claim and he said "Yes; it was all Mr. Holman's property."
Q. Do you remember the date of that conversation?
A. On the 9th of January, 1900.
Q. This property was at Antamok?
A. Yes sir; from the top of the hill above the slide.
Q. Did Fianza in that conversation make any claim to that property to you?
A. No sir.
Q. Did he make any claim to you of any mining claims?
A. No sir.

Q. Did the Igorote Fianza tell you that he had any mining property in that part of Antamok?
A. No sir.
Q. What was his reason for going up there then?
A. To show us the property that belonged to Holman.
390 Q. Did you pay him anything for going up there?
A. No sir.

ANTONIO ROMERA, testifying with reference to the ownership of the mines in Antamok, said (page 113):

Q. Where do you live?
A. La Trinidad. (This is the town located a few miles from Baguio in the Province of Benguet.)
Q. How long have you lived in Trinidad?
A. Since 1890.
Q. What is your nationality?
A. Spanish.
Q. Are you acquainted with the Antamok mining district?
A. Yes sir; I have been there several times. (Page 115.)
Q. During any of your trips to the Antamok mines or during your residence in Benguet Province, did you ever hear of Fianza owning any mines or claiming to own any mines?
A. No sir.
Q. State if you know what was the general understanding among the inhabitants of Benguet Province as to the ownership of the mines at Antamok.
A. I never hear any rumors about the ownership of those mines.
Q. State whether or not it was generally understood in this province that any person was free to go to these mines and obtain gold from them upon his own account.
A. I did not hear that the mines were worked by any one in particular, but what I do know is that every one went there
391 and worked and got out gold, that is every one who wanted to.

Continuing upon the same question, FRANCISCO VELANCIO testified as follows:

That he was seventy-six years old and had lived in the Province of Benguet since 1880; that he was Secretary in the Province.
Q. Do you know Fianza?
A. Yes; I know him.
Q. Did you ever live in Antamok?
A. Yes sir.
Q. When were you living in Antamok?
A. Since 1894.
Q. Do you know whether there are any mines in Antamok?
A. Yes sir; there is.
Q. Did you ever hear or know of Fianza claiming to be the owner of any mines at Antamok during Spanish times?
A. I never heard.
Q. Who worked in those mines during Spanish times?

A. The Igorotes who lived there and any other Igorotes who wanted to work there.

Q. Could any Igorote who wanted to work there in those mines to take out gold for his own use do so?

A. Some Igorotes from Tublay and Kaybayan also go there to get gold; I think they come because I never heard that any one prohibited them from doing so.

Q. During Spanish times did any one person claim to own these mines?

A. I never observed any one person prohibiting any——

392 Q. Do you know Mr. Hans Holman?

A. Yes sir.

Q. Did he make any claims to any mines in Antamok?

A. I have been told by him himself, yes sir.

Q. When?

A. Before the arrival of the Americans.

Q. State whether or not any papers were prepared by you for Mr. Holman relating to any mining claims before the Americans arrived here.

A. Some papers Mr. Holman wanted me to give Fianza for signature.

Q. Did yo*g* sign any papers for Mr. Holman?

A. Yes sir.

Q. Were these papers taken to Fianza for his signature?

A. Yes sir; Mr. Holman took these papers himself to get his signature.

Q. Did you see these papers after he had taken them to Fianza for his signature?

A. Yes sir.

Q. Do you know what those papers were about?

A. Yes sir.

Q. State if you know what the said papers related to.

A. It related to mines.

Q. Do you know what mines it related to?

A. The Antamok mines.

Q. Did you buy any gold in Antamok when you were living there?

A. Yes sir.

393 Q. Do you know whether the mines in Antamok had any particular owners during Spanish times or not?

A. I never hear of any owners of that mine.

Q. Did you ever hear of Fianza being the owner of or claiming to be the owner of that mine during Spanish times?

A. No sir.

Q. Did you ever hear of Finaza's father, Dominguez, claiming to be the owner of these mines during Spanish times?

A. No sir; no one that I know of.

Q. Did you buy gold of the Antamok mines?

A. Yes sir; I bought gold.

Q. From whom did you buy gold?

A. I can not fix the names of the Igorotes who sold me gold; if

any Igorote wanted to pay me five or ten cents in gold, I exchanged salt and clothing with them for their gold.

Q. Did they get that gold from the mines of Antamok?

A. Some Igorotes got it from that mine and some times they got it from the rivers.

Q. Did you buy any gold from the father of Fianza?

A. No sir.

Q. Did you buy any gold from Fianza?

A. No sir.

Q. What office have you held since 1894 under the government?

A. I was secretary in Atoc in 1894, '95 and '96.

394 Q. Were you ever secretary of Baguio?

A. Yes sir.

Q. When?

A. In 1898.

Mr. HOLMAN testified upon this question as follows:

Q. How long have you lived in the Philippine Islands?

A. Ten years.

Q. Did you ever live in Benguet Province?

A. Yes sir.

Q. When did you go to Benguet Province?

A. In 1895.

Q. Do you know the Antamok mining district in this province?

A. We denounced that mine; the papers which we made out were burned up in the comandancia during the Spanish government; we commenced the denouncement of that mine in 1896.

Q. What property did you denounce and how much of it and where in Antamok?

A. One hundred and twenty square meters is what we denounced.

Q. What part of Antamok mountain did your claim cover?

A. On the side of the mountain, on the steep slope where there were many holes.

Q. Do you know where the barrio of Antamok is?

A. Yes sir.

Q. Do you know where the barrio of Ampassit is?

A. Yes sir.

395 Q. Do you know the place on the side of the hill called the slide?

A. Yes sir.

Q. Did your claim include the whole of that slide?

A. Yes sir.

Q. Do you know the plaintiff Fianza?

A. Yes sir.

Q. How long have you known him?

A. It has been ten years.

Q. Do you know whether or not he knew that you had commenced denunciation proceedings in regard to that mine at Antamok?

A. Yes sir; because he himself signed the papers saying it was mine.

Q. When did he sign the papers?

A. I don't remember what date it was, because my father has taken the papers away with him and the witness who was just on the stand also signed the same here in the old tribunal in the room corresponsing to this one.

Q. Did Fianza pretend to be the owner of those mines at that time?

A. No sir; he never did say that; whoever liked could get gold from that mine; any one could get gold from that mine; when I arrived there he did not complain; he only said they were mine (Holman's). You may go to Itogon and to Antamok and every one every where will tell you that they are mine.

Q. I hand you plaintiff's Exhibit C which purports to be a plan of the mine claimed in this suit by Fianza at Antamok, which
396 purports to include the place referred to by you as the slide. State to what extent your denunciation took this in.

A. All above the river (Placing his hand on the map). The stakes are there yet if they have not been torn down, the same people there at Antamok put them there.

Q. Did you put any stakes of any kind?

A. We changed these stakes in 1898; I went there three times; I went there in 1902; we have measured these mines three times and we took Herman, the engineer, with us; it is possible he has the plan with him.

Q. Did the Igorotes generally know that you had denounced mines at Antamok?

A. I should say so because they themselves say so.

Q. Do you know when the engineer Herman measured your claim?

A. I don't remember the year, but it was a long time ago.

Q. Who helped you to lay off these mines?

A. Herman.

Q. How many excavations did you find in the mine when you went there?

A. I think five or six holes.

Q. When you were there the first time was it that Fianza signed the papers stating that you were the owner of the mines individually?

A. No sir; afterwards.

Q. How long after was it that Fianza signed these papers?
397 A. In 1897.

Q. Did any other Igorote sign that paper or a similar paper besides?

A. Two chiefs—rich men.

Q. Who else signed the documents?

A. José Cariño, Acoup; I don't remember the others.

Q. Is this paper "Plaintiffs' Exhibit C" the plan of the ground you located?

A. It is.

Q. How do you know it is the same land that you denounced?

A. I went there myself.

Q. By what mark do you recognize that as the same land?

A. It is the same on which I placed stakes.

Q. Were your stakes placed in the same places as the stakes indicated on this map?

A. Yes sir.

Q. Do you remember Mr. Reavis going to you before he made a location in the Antamok property and asking you whether or not you had claims on that property?

A. Yes sir; I remember.

Q. What did you tell him?

A. "Take care, whether you want to work or not, if you like to work you work; I don't care about the mines."

Q. Did you put the stakes on the Antamok mountain yourself or did an official do this for you?

A. No sir; I myself with the Igorotes of Antamok.

398 - Mr. H. CLAY CLYDE, in testifying as to the exclusive use by the plaintiff of the land in question, said:

Q. When did you first go to the Antamok mining district?

A. July, 1900.

Q. For what purpose?

A. To prospect.

Q. Did you prospect generally over the Antamok district?

A. Yes sir; I looked around quite a bit. The Igorotes told me that it belonged to Mr. Holman, so I looked around and as they had all the land I came back to my camp; and afterwards in December of the same year I went there to look it over again and I made some locations in January, 1901.

(Handing witness paper marked for identification "J");

Q. Assuming this to be an approximately accurate diagram of the Antamok mining district, state whether or not you saw a post with a cow's head on it near the junction of the trails leading to Gamoc, Itogon and Baguio.

A. Yes sir; I saw a stake there.

Q. When did you first see that?

A. The first time I went there in July, 1900.

Q. State whether or not you saw any other mark in the way of a tree with some stones in the branches of it.

A. The Igorotes showed me that mark in December, 1900;
399 it was a tree on the side of the hill, perhaps a little south of east from my house. I marked my house with the letter "C."

Q. What did the Igorote say they represented?

A. He said it represented the limits of Holman's claim and pointed off in the direction eastern towards another stake, so I never interfered upon that ground.

Q. At the time the Igorote pointed out these marks to you, he stated that they were Holman's claims; did you believe it belonged to Holman?

A. Yes sir.

Q. Is that the reason you didn't locate claims there?
A. Yes sir.
Q. Do you know where the claims of the defendant Reavis were located?
A. Yes sir.
Q. State whether or not the claims claimed by the defendant Reavis were within the boundaries of the ground described to you by the Igorote as being the claim of Holman?
A. Yes sir.
Q. When did you first know that the plaintiff, Fianza, claimed any mining property in that vicinity?
A. About the latter part of June or July, 1902, just before the mining laws came out.
Q. Were you in the neighborhood of these mines prior to that time?
A. Yes sir.
Q. Did you hear any Igorote or any person say or intimate
400 that Fianza had any claims there?
A. No; I never heard of any one.
Q. Do you know whether or not the defendant Reavis has been in possession of the mining claim staked out by him, as testified to by you, in March 1901?
A. Yes sir.
Q. Has he worked these mines since then?
A. Yes sir.
Q. Does he live on any of them?
A. Yes sir.

Mr. PERRY IAMS, testified upon the same question as follows:

Q. When did you first visit the district when the Americans attempted to organize what is known as the Antamok Mining District?
A. The latter part of December, 1900.
Q. Do you know where the defendant Reavis has located claims there?
A. Yes sir.
Q. Did you prospect over that country?
A. I went over the country but I did not prospect it.
Q. Why not?
A. The Secretary of the barrio there when we went over there the first time told me that the property there belonged to Mr. Holman, so I didn't waste any time prospecting there.
Q. Did you make any attempt to find out what property Holman claimed there?
401 A. Yes sir; I asked the Secretary to show me the extent of Holman's claim and he sent an Igorote with me to show me the stakes which Holman had placed up there.
Q. Do you know what ground was pointed out to you as being claimed by Holman at that time?
A. Yes sir; I remember very distinctly that ground.
Q. Point out to the Court the ground that was pointed out to you

as being Holman's claim, with reference to the claim as now held and claimed by the defendant Reavis.

A. Well; Mr. Reavis' claim would be inside the lines that they claimed belonged to Mr. Holman at that time.

Q. The whole of his claim would be inside?

A. Yes sir; all of his claim would be inside the line.

Q. Did you see any work done there south of the river, near the junction of the trails that run to Gamoc, Itogon and Baguio?

A. Yes sir.

Q. What kind of a post did you see there?

A. The post was seven or eight feet high, with a cow's head fixed onto it.

Q. Was there any other sign seen by you?

A. Yes sir; a tree north of there, or a little west of north and locked up in the branches of the tree were some stones, and they told me it was the other corner of Mr. Holman's ground.

402 Q. Who called your attention to those points?

A. The Igorote who had showed to me Mr. Holman's claim.

Q. Did he indicate any other point?

A. He showed me three stakes and then pointed to where the other corner was.

Q. Do you know when Mr. Reavis located there?

A. Yes sir.

Q. When?

A. I think he located his first claim there in March, 1901.

Q. Do you know whether or not he staked that out in 1901?

A. Yes sir.

Q. How do you know?

A. I saw his stakes there.

Q. Did any Igorote, during the time you were there, ever claim any mining property?

A. No sir.

Q. Did any Igorote claim any mining property there to you or within your knowledge?

A. No sir.

Q. Do you know the plaintiff Fianza?

A. Yes sir.

Q. When did you first learn that Fianza claimed any mining property in that district?

A. I don't remember the exact date; it was quite a long time after I had been living at Antamok, about a year after, before I knew he ever claimed any mining land there.

403 Q. Was Mr. Reavis in possession of mining claims there many months before you heard of Fianza claiming any interest in that property?

A. Yes sir.

Q. During that time did you see any Igorotes working for Mr. Reavis?

A. Yes sir.

Q. How long did you work for him (Mr. Reavis)?

A. About two weeks.
Q. What kind of work were you doing for Mr. Reavis?
A. Driving tunnels.
Q. Where?
A. On his claim in Antamok.
Q. Can you state whether or not that work was done on the same property which he now claims?
A. Yes sir; it was the same.
Q. Did any one object to you—did Mr. Reavis or any of his other employés working on said claim?
A. No sir.
Q. Did you work openly and above-board during that time?
A. Yes sir.
Q. You were working during the day time?
A. Yes sir.
Q. Where were you living at that time?
A. In Antamok.
Q. Where was Reavis living at that time?
A. On his claim in the same house he is living in now.

404 Mr. FRED STEUBER testified upon the same question as follows:

Q. Have you been down to the Antamok district?
A. I came there in October, 1901.
Q. What did you do there in 1901?
A. I was working for Mr. Reavis in the mine—at the gold mines.
Q. Where was Mr. Reavis mining at that time?
A. Antamok.
Q. How long did you work for him?
A. About three months.
Q. Were there any other persons working for him while you were working for him?
A. Yes sir; Igorotes.
Q. Do you know the claims he is now claiming?
A. Yes sir.
Q. Is that the same ground that you were working in 1901?
A. Yes sir.
Q. During the time you were working for Mr. Reavis did any one object to his working those claims?
A. No sir; not to my knowledge.
Q. During that time did you hear any Igorote claiming any part of those mines or claims?
A. No sir; I did not.
Q. Do you know anything about what was alleged to be Holman's claim there?
A. From what I understood from the Igorotes there he said that Mr. Reavis was foolish to work those mines as they belonged
405 to Holman; I did not know Holman at the time; I did not hear them say that they belonged to any Igorotes there.

NELSON PETERSON, testifying upon the same question said:

Q. Are you acquainted with the district known as the Antamok Mining District?
A. Yes sir.
Q. When did you go there?
A. In the year 1901, in February.
Q. What were you doing there?
A. Prospecting; locating claims.
Q. While you were prospecting there was any mention made of any property interests there?
A. Yes sir; I understood that Holman had some property interests there.
Q. Do you know whether Mr. Reavis has any mining claims at the present time?
A. Yes sir.
Q. State where the property is which was pointed out to you as Holman's property, with reference to the claims owned by Reavis.
A. It covers practically the same property.
Q. Do you know where Reavis lives?
A. Yes sir.
Q. Does he live on any part of the claims he staked out in the early part of 1901?
A. Yes sir.

406 Mr. H. P. WHITMARSH testified upon the same question as follows:

Q. What official position, if any, did you ever occupy in the Province of Benguet?
A. First Governor under American occupation.
Q. Were you in Benguet Province before you were appointed Governor?
A. Yes sir; nearly a year before.
Q. State as near as you can when you first came to Baguio?
A. The latter part of December, 1899, or the beginning of January, 1900.
Q. Do you know the district known as the Antamok Mining District?
A. Yes sir.
Q. Did you ever go there?
A. Yes sir; I went there to get information about the mines of the country.
Q. Do you know the plaintiff Fianza?
A. Yes sir.
Q. State whether or not you saw him when you first came to this province.
A. I stayed with him in Antamok when I first went there.
Q. What position did he occupy at that time?
A. I understood he was Presidente.
Q. Did you ever talk with him in reference to the mines in Antamok?

A. All about the mines in the vicinity; he advised me to
407 go to Antamok to look at them.

Q. What did he say in reference to the Antamok mines?

A. He said that Holman owned the place where they were.

Q. Did Fianza at that time tell you that he owned any part of that mine?

A. No sir.

Q. Did you go to him for the purpose of obtaining information regarding these mines?

A. I asked him about them the time I came back to Itogon; I went there first and then came back and stayed with Fianza and then he told me that Holman had denounced some claims there.

Q. Did you hear any other person say that Holman had held mining property there or had denounced some claims?

A. His father wrote me about it and some Igorote who I met in Antamok pointed out the hill of Antamok as belonging to Holman and Holman told me so himself.

Q. Did they point out that hill on your first trip there?

A. Yes sir.

Q. Do you know the defendant Reavis?

A. Yes sir.

Q. Do you remember when he first came to Baguio?

A. Yes sir; in the fall of 1900.

Q. Have you any personal knowledge of his locating any mines at Antamok?

A. Yes sir.

408 Q. Do you know when they were located?

A. In the beginning of 1901.

Q. When did you first learn of Fianza making claim to mines in Antamok?

A. When he came to the tribunal and spoke of it.

Q. When was that?

A. As I remember some time about June or July, 1901, I should say; while I was Governor.

Q. After you had seen the stakes pointed out to you by Mr. Reavis as his claim?

A. Yes sir.

Mr. J. E. KELLY, testified upon same question as follows:

Q. What is your occupation?

A. Mining.

Q. How long have you resided at Bua?

A. Three years.

Q. Have you been engaged in the occupation of mining during all that time?

A. Yes sir.

Q. When did you first enter the Province of Benguet?

A. About January 1901.

Q. For what purpose did you go there at that time?

A. To mine.

Q. And to what particular parts of the Province did you go?

A. Pretty much all over the province.

Q. Are you familiar with the district known as Antamok?

409 A. Yes sir.

Q. Did you visit that district on that trip in January, 1901?

A. Yes sir.

Q. Did you become familiar with the mining conditions at Antamok at that time?

A. Yes sir.

Q. Are you familiar with the property that is now claimed by J. F. Reavis under the mining location staked by him?

A. Yes sir.

Q. Did you become familiar with that property in January, 1901?

A. Yes sir.

Q. Will you state what were the conditions of that property when you first became familiar with it?

A. When I first became familiar with it there were some natives working there who were, as I was told, working for Holman; that is, the gold they recovered was to be turned over to Holman and they were to receive so much per ounce for every ounce they recovered.

Q. Do you know Mr. Holman?

A. I know his father.

Q. When did you become acquainted with his father?

A. In March or April, 1901.

Q. In relation to what matter did you become acquainted with him?

A. I went to see Mr. Holman with a view to purchasing his Antamok holdings.

410 Q. What, if anything, transpired at that conference with Holman?

A. I asked him with reference to his holdings in the Antamok district and he told me that he had a mine there, that his brother had been looking after for him—no; not his brother, his son rather. I asked him if the property was for sale and he said that it was; when I asked him what the price was I don't remember now just what figure he did place on it but it was out of the question and I told him I couldn't consider it. Some time later he sent for me and gave me a more reasonable price. I questioned him then in regard to the title; he told me that he had secured his first papers on the mines and would have had the final papers had it not been for the Spanish-American war. He also showed me the report made by Mr. Herman, the German mining engineer, who was in Manila at that time. In this report Herman advised Holman to raise $100,000 gold for prospecting purposes on the Antamok mines. I learned that the property had been restaked by the Americans, after that, so I dropped it and had nothing more to do with it.

Q. Are you familiar with the location of the lands concerning which you negotiated with Mr. Holman? Do you know what mines they were that he was offering you?

A. Yes sir.

Q. Do you know what they are; do you know just where they lie? That is what I mean by being familiar with their location?

A. Yes sir.

411 Q. Where do they lie with reference to the mining lands which are claimed by Mr. Reavis?

A. Practically the same ground.

Q. So far as you know then Mr. Holman was the undisputed owner of the mines in question?

A. Yes sir; so far as I learned in the district.

Q. Do you know José Fianza?

A. Yes sir.

Q. How long have you known him?

A. Three years.

Q. Did you meet him during your trip in January, 1901?

A. No sir; I did not.

Q. When did you first meet him?

A. I may have met him later on in January, 1901—no; I met him in November, 1902.

Q. Then Fianza was not in possession of the Antamok mines in January, 1901?

A. Not that I ever heard of; I never knew anything of it.

Q. When you met José Fianza, between that time and the present time, have you discussed mining matters in the Province of Benguet with him?

A. Not anything further than Mr. Fianza, when Governor Pack sent his private secretary to locate this — of Reavis they came to my place. They went down and located the ground, staked it out and returned to Baguio to the recorder's office to have it recorded. Fianza, on his way home, came by my place and stopped and offered me the claim that he had just located; or did not offer it to me; he told me it was for sale for $25,000.00.

412 Q. Was that the first time that you know of Fianza having a claim on any mine at Antamok?

A. Yes sir.

Q. When was this with reference to the location of Reavis' claim—was it before or after?

A. I should judge it was a year or such a matter after.

Q. You are very positive it was after and not before?

A. I am very positive it was more than a year after.

Q. Had you known Fianza previous to this time?

A. Yes sir.

Q. Had he ever claimed to be the owner of these Antamok mines previous to this time?

A. Never.

It is confidently contended that a careful reading of the testimony of the witnesses quoted above will justify the following propositions:

1st. That the plaintiff Fianza prior to the commencement of this action did not claim or pretend to claim the *exclusive right* to occupy any particular tract or parcel of land in the mountain of Antamok.

2nd. That he made no effort to prevent the working and occupation by any one of any mine in said mountain.

3rd. That Holman took possession of a well defined tract of land in said mountain, covering the present claims of the defend-
413 ant in the year 1895, without any objection or protest from the plaintiff Fianza or any of the other co-plaintiffs.

4th. That the defendant, Reavis, found the lands or claims now in question unoccupied by any one in the early part of the year 1901, and that he took possession of the same *peaceably, without protest* or *objection from the plaintiffs or any one of them.*

5th. That neither the plaintiff Fianza nor any of the other plaintiffs, attempted to occupy the particular tract or parcel of land in question or any other tract or parcel of land in the mountain of Antamok, for mining purposes, or for any other purpose, *to the exclusion of all other* persons.

The defendant did not dispossess the plaintiff. The plaintiff was not in possession of the particular tract or parcel of land at the time the defendant took possession. The lower court, upon this question, made the following finding of fact: (see Bill of Exception, page 33) "The Court finds that the defendant, John F. Reavis, entered upon the mines owned and claimed by the plaintiffs in the year 1901, and staked out his three claims thereon, *under the honest belief that the same was included in an abandoned, forfeited Spanish grant of one Hans Holman*, and that *at the time of his first entry thereon*, and *the setting of his stakes*, he *had no actual knowledge* that the Igorotes, who were then living upon the land claimed the ownership of said mines.

The lower court makes the further finding of fact in reference to the entry of the defendant upon the lands in question: (see
414 Bill of Exceptions page 24) "In the month of *of* March, 1901, the *defendant entered upon the lands* embraced in, and next to the mines of the said plaintiffs, *upon the information that said mines of the plaintiffs had been located under the Spanish Mining Law, by one Hans Holman, in the year 1896, and that said mine and mines were abandoned by said Hans Holman, and that they were vacant mineral and mining lands,—proceeded to stake and locate these claims under the Mineral Laws in force in the United States.*"

The lower Court makes the statement that the *plaintiff immediately protested* to the defendant against [illegible] occupation of said mines. It is confidently asserted that there [illegible] *not a single word of proof in the record to support this finding of fact.* The defendant states in his testimony that the plaintiff *never* made a protest to him personally in reference to his occupancy of the said mines. The plaintiff, Fianza, states in more than one instance that he protested to others, he does not state that he made a protest to the defendant. The lower court in its decision (see Bill of Exceptions, page 25) attempts to make it appear that in May, 1902, the defendant, by an agreement entered into before the Governor of the Province of Benguet, recognized the rights of the plaintiff to the possession of the said lands. The attorney for the plaintiff, however,

in this court makes no such contention; he states: "*The agreement of May, 1902, did not, and was not intended to affect the rights of either party.*" A reading of the agreement entered into between the parties hereto before said Governor fully justifies the statement of the attorney for the plaintiff.

415 Notwithstanding the conclusions of the lower court, that the plaintiffs had occupied the particular tract of land to the exclusion of all others for so many years, it finds (see Bill of Exceptions, page 36) that the plaintiffs in this case, during the entire time of the occupancy of these Islands by Spain, and up to the date of the transfer of sovereignty to the United States (April 11, 1899) *did not gain, nor can they gain under the laws in force, any right, title or interest* to the mines in question nor the minerals therein by virtue of their possession, and the working of the same. The doctrine of prescription as against the Crown of Spain, never applied to the mineral lands of the Philippine Islands."

It is clear therefore, that any right of the plaintiff therein must have its origin in legislation had subsequent to the American occupation. The plaintiff had done nothing at any time up to the time of the conclusion of this action in the court below to comply with the Act of Congress of July 1st, 1902, which Act was made extensive to the Philippine Islands on August 14, 1902, while upon the other hand, the defendant honestly and in good faith, *took peaceable possession of the lands which he claims and attempted and did comply with the rules and regulations applicable to the mineral lands in the United States*, and immediately upon the promulgation of the Act of Congress, *took all of the steps required in said Act to locate and record his claims.*

It is insisted that one who claims mineral lands under the Act of Congress in force in these Islands, must define the site of the ground with such certainty as may be necessary to prevent mistake

416 on the part of the government and on the part of citizens who may be asking a like benefit. This requirement placed upon all persons claiming mineral lands is but a reasonable and necessary requirement in order to justly administer the law, and therefore, a description of the location and mineral lands, which is *indefinite* and *uncertain*, for the purposes of holding a particular tract of land, is void. In Faxon *vs.* Bernard, 4 Fed. Reptr. 702.

The lower court in its decision (see Bill of Exceptions, page 19) admitted that the description of the lands in question were so *indefinite and uncertain that the court could not determine the exact nature of the conflict of lines and* boundaries. If the court, while it had the witnesses in its presence, could not determine the "exact nature of the conflict of the lines and boundaries" of the lands in dispute how can it justify its perpetual injunction which it granted against the defendant to prevent him from entering upon *any lands?* The court further says in discussing the question of the title to the lands (see Bill of Exceptions, page 34) "the facts proved in this case, fortunately are clear, specific, and definite in all respects, save one: that *one exception relates to the exact boundary lines of the opposing claimants in reference to their relations with each other.*"

It is submitted, therefore, that the evidence produced during the trial in said cause, was not sufficient to show that the plaintiff had occupied a definite, well defined tract of land to the exclusion of all others.

The plaintiff was not entitled to the benefit of the extraordinary, equitable remedy of injunction until he had proved that he was the owner of, or entitled to the possession of a well defined
417 tract of land or mine, marked by certain lines and limits. He must first show that he had a right to the possession of said tract, not only against the government of the Philippine Islands, but as well against the defendant. (Gwillim *vs.* Donnellan, 115 U. S. 45.)

It is admitted that the defendant, some time after the promulgation of the act of Congress in these Islands, attempted to comply with the requirements thereof, in locating and recording his claim, and that the plaintiffs did nothing toward complying with the said law. It is also admitted that the plaintiffs, at the time of the transfer of the Spanish sovereignty over the Philippine Islands, to the United States, had no right, title nor interest, in the lands in question. Bearing these facts in mind, *it is contended that the mere, naked possession of a mining claim upon public land, is not sufficient to hold such claim as against subsequent location, made in pursuance of the law, and kept alive by a compliance therewith.*

In the present case, the *plaintiffs attempted to stand upon the bare possession, without a location or record against the defendant, who had a location and record.* Under such circumstances there is no presumption of title in favor of the party in possession; but, if there was, *he who shows a valid location as against naked possession, has the better right.* (Noyes *vs.* Black, 4 Montana, 534; 2 Pacific Reporter, 769; Hopkins *vs.* Noyes, 2 Pacific Reporter, 280; Le lande *vs.* McDonald, 13 Pacific Reporter, 349.)

The cause Belk *vs.* Meagher, 104 U. S. 279, is cited by the majority opinion to support the doctrine laid down in its de-
418 cision. A careful reading of that decision supports the contention of the defendant, rather. The Court in that case said "Under the provisions of the Revised Statutes relied on, Belk could not get a patent for the claim he attempted to locate, unless he secured what is here made the equivalent of a valid location by actually holding and working for the requisite time. If he actually held possession and worked the claim long enough *and kept all others out* his right to a patent would be complete. He had no grant of any right of possession. His ultimate right to a patent depended entirely on his keeping himself in and all others out, *and if he was not actually in, he was in law out.*" In the same case the Court continues: "A peaceful adverse entry, coupled with a right to hold the possession, which was thereby acquired, operated as an ouster which broke the continuity of his (Belk's) holding and deprived him of the title *he might have got* if he had kept in for the requisite length of time. *He had made no such location as prevented the lands from being in law, vacant. Others had the right to enter for the purpose of taking them up if it could be done peaceably and without force.*"

The following facts are admitted in the present case: *1st*. that the plaintiffs, up to the time of the trial of said cause in the lower court, even though the law had been in force in these Islands for nearly two years, had made no attempt to definitely locate or record their claims; *2nd*. that the defendant entered upon the lands he claims, peaceably and without opposition; *3rd*. that the defendant continued in possession of said land until the injunction was granted by the lower court; *4th*. that immediately upon being in-
419 formed of the requirements under the said Act of Congress, he complied therewith; *5th*, that about eighteen months prior to the date of the said Act of Congress, the defendant had located the mines in question and performed the work upon them as required by the statutes of the United States.

Our next proposition is that it was not the custom of the Igorotes, a mountain tribe occupying the hills of the Province of Benguet, to occupy any parcel or tract of land, either for mining or for farming purposes, to the exclusion of other members of the same tribe. The majority opinion says that the plaintiff had worked the particular mines in question for fifty years or more. THERE IS NO BETTER PROOF OF THE FACT THAT THIS STATEMENT IS FALSE THAN THE FACT THAT NO EXCAVATIONS WERE FOUND UPON THE SAID LAND AT THE TIME DEFENDANT WENT THERE, WHICH A HALF DOZEN MEN MIGHT NOT HAVE MADE IN ONE DAY'S OPERATIONS.

As to the custom of the Igorotes to move from place to
420 place and not to abide permanently in or occupy any particular place, we desire the record to answer. Fianza himself (record page 4) states: "The excavations were not the same; there were many different classes of excavation, some of one fathom deep and some two fathoms deep. Our custom is if we do not find gold in one fathom or two fathoms, we work another place until we do find some."

Mateo Cariño (Igorote) (Record, page 40) said that the Igorotes moved the holes to find the veins.

Reavis (Record page 96) stated that the character of the mining done by the Igorotes was what is called in the United States "gophering."

Clyde (Record, page 147) said:

"The custom among the Igorotes was to dig little holes and follow up little stringers where they could see a little free gold, and then they would put rocks on rocks and grind them out and sell it for what they could get for it. They never located any claims to property. They would go into the ground and work as long as any gold was there and then another Igorote would come along and find a little gold and he would continue, and any of them that came along would work at any place they wanted to; they never claimed ownership for any length of time; they would work in one place for one day and may be for one week; they would work in one place a week and the next place they might be working would be a mile from there in another entirely different place."

421 Iams, (Record page 158) said, as to the custom of the Igorotes, "As near as I could find out the Igorote miners

mine wherever they can find any gold, regardless of any claims; they never claim any mining property. From what I have seen there they hunt for rich stringers; when they find one they follow it and work it out like we call "gophering" in the United States."

Fred Steuber (Record page 165) said "There were some small holes all over the country."

Kelley said (Record pages 6, 7 and 8) in answer to the question, "What would you say concerning the custom of the Igorotes with reference to the assertion of exclusive property rights over mining claims?"

"Igorotes go to mining, as a rule, every year, after the rainy season, and maybe a certain Igorote will mine in one river this year and the next year he will be off of some other stream or on some other quartz lode, just the same; he will find a small little stringer, as we call them, where you can see some free gold. He will work that out until he gets tired of it and then he will go to some other place and find another one; maybe some other Igorote will come along and go into the one that he has left and work that a while in that way and then run over the whole country and work in a little hole here and a little hole there and they work it until they are tired of it and then go some place else.

Q. While an Igorote is working his discovery of a pocket or stringer as you term it, for how great a distance does he ex-
422 clude other Igorotes from working?

A. Well, very often he allows several of them to go in with him and he gives them an equal interest in what they recover; he will allow several of his friends to go in and help him to work and give them all equal interest in what they recover.

Q. In the same pocket?

A. Yes sir; he don't exclude them at all; he just claims the little hole he is in, 2 x 4, just big enough to crawl in.

Q. And when you speak of admitting other persons on equal shares with him, you mean admit them to the same little hole in which he is working?

A. Yes sir; the same place.

Q. Now, for how long does he claim ownership of that particular hole or pocket?

A. Well, it depends a good deal on how far this little streak of pay, as they call it, will extend; maybe they will work a month and maybe a week.

Q. Then I understand you to say he claims it only during such time as he is working it?

A. Yes sir.

Q. He does not exercise any claim of ownership over it after he has ceased work?

A. No sir.

Q. Have you known José Fianza to have conducted any mining operations upon these Antamok mines?

A. No sir; I have not any more than the natives who re-
423 cover gold any place in the district, they are supposed to take it to Fianza.

Q. Take it to him for what purpose?

A. To pay their indebtedness or to sell it to him for whatever he had a mind to pay for it. I have been told by some of the oldest Igorotes in that district that Fianza at one time used to pay a media peso for what was considered an ounce of gold.

Q. By virtue of what did this arrangement exist?

A. As near as I can learn he is the high chief of the barrio (or tribe) and they all looked up to him as such.

Q. Did it exist because of any ownership or claim of ownership on the part of Fianza of these or any particular mines?

A. Not to my knowledge.

ROBIERA, a Spaniard who had lived in the Province of Benguet for ten or twelve years, testified as to this custom as follows:

Q. Do you know the custom that was in vogue in Spanish times with reference to mining at Antamok mining district?

A. The custom that they had for working those mines was that any Igorotes who wanted to, went there and worked and then sold the gold, but I never heard or knew of any one claiming to be the owner of the mines.

424 Q. State to the court how you learned that custom.

A. I learned it by going over it selling goods; I saw that all the Igorotes sold me gold and that it was the custom of every one who wanted to, to go there and get out gold from those mines.

FRANCISCO VALENCIO, who had lived in the Province of Benguet for many years and had been an official there under the Spanish Government, testified as to the custom of the Igorotes as follows:

Q. Who worked in those mines during Spanish times?

A. The Igorotes who lived there and any other Igorotes who wanted to work there.

Q. Could any Igorote who wanted to work there in those mines to take out gold for his own use, do so?

A. Some Igorotes from Tublay and Kaybayan also go there to get gold. I think they could because I never heard that any one prohibited them from so doing.

Q. During Spanish times did any one person claim to own these mines?

A. I never observed any one person prohibiting any other person from working there.

425 These foregoing excerpts from the record from the testimony of men who had been in the district, who had studied the conditions there and become acquainted with the customs of the Igorotes, certainly justify the *conclusion that the Igorotes never occupied a mine anywhere to the exclusion of all or any other persons.*

The majority opinion (page 14) attempts to discredit the testimony of these witnesses, particularly the American miners, by the following statement: "All these witnesses had mining claims similar to that of Reavis."

Notwithstanding this attempt to discredit these witnesses, whose testimony was not attacked during the trial of said cause, it will be observed that this custom is corroborated by Fianza himself, by Juan Cariño, Mateo Cariño, Robiera and Francisco Valencio, who were not American miners and who have no reason to misstate the facts by reason of personal interest.

The majority opinion, in an effort evidently to reflect upon the integrity and honest purpose of the defendant, Reavis, in taking up this particular land, refers to the other claim-holders in the vicinity as "honest American miners." This imputation as to the honesty of the defendant is not justified by the record. It is confidently believed that one can not read the testimony of the defendant himself without reaching the conclusion that he is stating the truth.

It is admitted (page 18 of the majority opinion) that the plaintiff never acquired any *title* to the property in question by virtue of the provisions of the Spanish law, and that said property
426 was, at the time the Philippine Islands were ceded to the United States, *public property* and that these lands are *public lands* to which the provisions of the Act of Congress of July 1st, 1902, are applicable; the right of the plaintiff, therefore, if any he has, is one of prescription only. Section 45 of said Act of Congress provides that where such person or association, they and their grantors, have held and worked their claims for a period *equal to the time prescribed by the Statute of Limitations in the Philippine Islands*, evidence of such possession and working of the claims for such period shall be sufficient to establish the right to a patent thereto under this act, *in the absence of any adverse claim*. This provision of the Act of Congress makes applicable to mining claims the Statute of Prescription in force in the Philippine Islands at that time.

The Statute of Prescription in force in the Philippine Islands on the 1st of July, 1902, are sections 38, 40 and 41 of Code of Procedure in Civil Actions, known as Act 190 of the Civil Commission. It is very questionable whether the plaintiff is entitled to the benefit of the period of prescription provided for in these sections. Said section 38 expressly provides that "this chapter shall not apply to *actions already commenced or to cases wherein the right of action has already accrued*, but the statute in force when the action or right of action accrued shall be applicable to such cases."
427 Section 40 provides that the period of prescription as to real property shall be ten years, or in other words, that an action for the recovery of title to or possession of real property or a case therein can only be brought within ten years after the cause of such action accrues. The plaintiff claims that he and his ancestors have been in possession of such land for fifty or more years. If that be true, had not the cause of action in favor of the plaintiff "already accrued" before the date of the Act of Congress or the date when said Act of the Civil Commission went into force?

If then the cause of action had actually *already* accrued prior to the date of these respective acts, the question is does said provision of the Act of the Commission apply to the plaintiff or must he rely upon the prescriptive rights given him, existing in the Philippine

Islands prior to that date? We make no finding upon the answer to this question for the reason that we believe that even granting that the provisions of said act of the Civil Commission are applicable to the claims of the plaintiff here, that even then he has not shown his right to the possession of said land under said act of the Civil Commission.

Said section 40 provides that "Ten years *actual adverse possession* by any person claiming to be the owner for that time of any land, *uninterruptedly* continued for ten years by occupancy * * * shall vest in that actual occupant or possessor of such land, a full and complete title"; but the same section imposes the further
428 condition that "in order to constitute such title by prescription or adverse possession, the possession by the claimant * * * must have been *actual, open, public, continuous*, under a claim of title exclusive of any other right and adverse to all other claimants." We contend that the testimony adduced in this case and quoted above clearly demonstrated that the plaintiff had not been in the actual, open, public, continuous possession, under a claim of title adverse to all other claimants not only *not for ten years*, but *for no period at all*. We call attention to the testimony quoted above relating to the actual possession of said property in support of this statement.

The majority opinion treats the provisions of this prescriptive law as though an actual dispossession of the property was necessary to interrupt the running of the statute in their favor. The provisions of the law provide, however, in additon to the fact that the possession must have been actual, that it shall have been *open* and *public, exclusive of any other right and adverse to all other claimants whatsoever. The actual and continuous possession of the plaintiff was interrupted certainly by Holman* six or eight years before the commencement of the action *by the plaintiff, by the defendant* more than two years before the commencement of this action, if not also by *Francisco Valencio* ten or twelve years before the beginning of the action by the plaintiff.

429 One of the conditions of prescriptive title under section 41 is that the claim to title must be public. A large majority of the witnesses both for the plaintiff and defendant testified that they understood and believed the mines in question, at the time Reavis took possession of the same, belonged to Holman. *The trial court even found that Reavis located his claims believing the land belonged to Holman.* This belief was so strong in the minds of some of the witnesses who were attempting to locate mines in the Province of Benguet, (Neuber, Reavis and Kelly) that they visited Holman and negotiated with him for the purchase of said mines. Why did they do this? Because it was a matter of public rumor and public knowledge in Antamok and vicinity that the mines at that time belonged to Holman and not to Fianza. *The record also discloses that Fianza himself told some of the American miners, who went into said province, that said mines belonged* to Holman.

We respectively submit as a proposition of law, even admitting that the plaintiffs had had actual possession of a well defined, de-

scribed parcel of land in the mountain of Antamok, that *such actual possession had been interrupted on at least three different occasions prior to the commencement of their action and that such interruption* of the actual possession, though it was unlawful, had the effect of stopping the running of the Statute of Prescription in favor of the plaintiffs. *If the possessor of land permits his possession*
430 *to be interrupted, although unlawfully,* his possession can not be called continuous for the purpose of applying the provisions of said section 41.

The majority opinion (page 11) quotes the following from the opinion of the trial court:

"He (Reavis) went to Antamok to stake out lands for mines that he believed was claimed by another—in the vernacular of the miner, to 'jump' Hans Holman's claim. He was not prospecting for a mine and for hidden minerals; he went to locate a mine already discovered and mineral uncovered and worked for more than half a century. He found honest American prospectors already there with claims staked all about the land that they believed was claimed by another, for the protection of which opened, developed, worked mine, the rumor of an owner was simply to protect it from invasion and trespass."

This statement has the effect:

1st. To convict Reavis of bad faith and to hold him up to the scorn of honest men by saying that he "jumped" a claim which had theretofore been respected by all honest American miners; and

2nd. To show that what he did was to locate an open, developed mine.

The statements in the above quotations do an injustice to an honest American miner and should be corrected. It appears from the record that Mr. Reavis, after being told by the Igorotes that this mine belonged to Holman, went to Holman to see him about such claims. This act of the defendant demonstrates that he acted in absolute good faith.

431 The statement in the majority opinion to the effect that the ownership of these claimants (plaintiffs) to these mines was well known and understood generally among the natives and residents of the Province of Benguet, including the *Spanish officials*, is absolutely unsupported by a scintilla of evidence in the record. There is not a word of evidence in the record that the *Spanish officials* ever recognized or understood that Fianza or his ancestors were the *owners* of any mines whatsoever.

It is claimed that the plaintiff Fianza claimed the possession of the particular parcel of land in question by a statement made on the 31st of January, 1901, for the purposes of taxation before the Secretary of the Pueblo, which shows that he was then in possession of said land. This statement is found in "Exhibit A" of the plaintiffs. An examination of this statement of the plaintiffs neither *shows* that he was in possession of said land nor the location of the same. His statement there is just as indefinite and uncertain, relating to the specific tract of land, as his statement made before the court during the trial of said cause.

The record fully shows that the defendant Reavis, early in the year 1901, took possession without protest of the lands which he claims and which are definitely described in the record, under the custom and in conformity with the laws of the United States relating to mines, recorded his claims, performed work upon said mines, and continued in possession of the same up to and including the time when he received notice of the provisions of the Act of
432 Congress of July 1st, 1902; that immediately upon receiving notice of the provisions of said Act he complied with the conditions thereof with reference to making affidavits and filing a record of his claims and staking the same out—marking them out—so that any person traveling in that part of the mountain might become aware of the exact location of his claims. That plaintiffs, even at the time of the commencement of their action (1904) had taken no steps to comply with the said Act of Congress. The record shows that up until the time the injunction was granted in this case by the lower court, the defendant had performed work upon his respective claims in conformity with the provisions of said Act of Congress; that he had done everything required of him by the law; that the plaintiffs had done nothing to comply with the provisions of the said Act of Congress. It is not denied that the defendant had complied with the provisions of the said Act of Congress.

We agree with the majority opinion that this court can not reverse the decision of the lower court until it appears that the finding made by the trial court is *"plainly and manifestly against the weight of evidence."* We agree with this doctrine, but confidently submit that there is nothing in the record, beyond the declaration of Fianza himself, which shows that the plaintiffs ever occupied the particular tract of ground now claimed, *while there is absolutely no evidence of any character to show that they occupied any land to the exclusion of all other persons. The evidence is all to the contrary.*

433 The Court finds that the plaintiffs and their ancestors have been working these mines for generations. Fianza, himself, testified that if they did not find gold in one or two fathoms, they made another place until they did find something.

The lower court attempted to defeat the claim of the defendant by the statement that the defendant had not complied with the Act of Congress providing for the location and operation of mineral claims within the Philippine Islands. It is asserted that the evidence adduced during the trial of the cause does not support this finding of fact, but, even granting that the defendant did not comply with every detail of the Act of Congress, with exactness, it was not in the mouth of the plaintiff to raise this objection, for the reason that he had made no attempt to comply with the law himself. Furthermore, section 29 of the said Act provides that "failure on the part of a locater of mineral claims to comply with any of the foregoing provisions of said section, shall not be deemed to invalidate such location, if upon the facts, it shall appear that such locater has actually discovered mineral in place upon such location, and that there has been, upon his part, a *bona fide* attempt to comply with

the provisions of this act, and if the nonobservance of the formalities hereinbefore referred to is not of a character calculated to mislead other persons desiring to locate claims in the vicinity."

One cannot read the record of what the defendant did in his attempt to locate and record his claim without reaching the conclusion that there has been upon his part, a *bona-fide* attempt
434 to comply with the provisions of this Act, and that, if there was a failure, which is not admitted, such failure is not "of a character calculated to mislead other persons desiring to locate claims in the vicinity."

From all the foregoing statement of facts, and from a thorough examination of the evidence adduced at the trial of said cause, we reach the following conclusions:

First. That the lands claimed by the plaintiffs are not described in their complaint with sufficient certainty or definiteness to support a judgment in *his* favor, nor to justify the court in granting an injunction to prevent the defendant from entering upon the lands which he claims.

Second. That the evidence adduced at the trial of the cause does not disclose how, or in what manner, the lands claimed by the plaintiffs conflict with the land occupied by the defendant.

Third. The evidence adduced, does not show that the plaintiffs or any one of them, have ever possessed or mined any particular tract of land under claim of ownership *to the exclusion of all others.*

Fourth. That the possession of the plaintiffs has not been actual, open, public, continuous, uninterrupted, under claim of title exclusive of any other right, and adverse to all other claims.

435 Fifth. That the evidence does not disclose that the possession of the plaintiffs, if any exclusive possession at all is proved, is not that possession, nor does it constitute that exclusive holding and working contemplated by section 45 of the Philippine Bill, or by the statutes of prescription in force in the Philippine Islands.

Sixth. That the evidence does not disclose that possession of the mines claimed by the plaintiffs, was continuous and exclusive of all other persons, and that such possession had been uninterrupted, without interference or adverse claim of any kind.

Seventh. That the evidence does not disclose that the plaintiffs made any protest against the occupation of said land to the defendant, to Holman nor to Valencio.

Eighth. The evidence does not disclose that the plaintiffs ever made any attempt, prior to the commencement of this action in the court below, to definitely mark the boundaries of the land included in "Exhibit C."

Ninth. That there is not a scintilla of evidence in the record which shows that the said lands are held in trust by the Government of the Philippine Islands for the plaintiffs.

The judgment of the lower court should be reversed.

436 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 2940.

JOSE FIANZA ET AL., Appellees,
vs.
J. F. REAVIS, Appellant.

Comes now the defendant and appellant in the above entitled action, and for him his attorneys, and presents an exception to the decision rendered in said cause by this Honorable Court under date of March 6, 1907, notice of which decision was received this date.

This exception is made without prejudice to the filing of a petition for a rehearing.

Manila, March 8, 1907.

HAUSSERMANN, COHN AND WILLIAMS,
Attorneys for the Defendant and Appellant.

Copy received this 8th day of March, A. D. 1907.

KINNEY, ODLIN AND LAWRENCE,
Attorneys for Appellees.

437 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. 2940.

JOSE FIANZA ET ALS., Plaintiffs and Appellees,
vs.
J. F. REAVIS, Defendant and Appellant.

Petition for Re-hearing.

Now comes the defendant and appellant in this the above entitled cause and petitions the Court for a re-hearing of said cause for the following reasons:

1. The findings of fact made by this Court are contrary to the evidence.

2. The Court erred in holding that the plaintiff was in possession of any part of the claims located by the defendant at the time said locations were made by said defendant.

3. The Court erred in not giving due weight and credence to the testimony of Ex-Governor Whitmarsh and the witness Knauber to the effect that prior to the location of said claims by Reavis in 1901, Fianza, the plaintiff in this case, made no claim or pretense of being the occupant or owner of any mining interests in said district.

4. The Court overlooked and failed to take into consideration the fact that the testimony shows that one Hollmann denounced
438 a mining claim in 1896, which claim covers the greater part of the claim claimed by Fianza, and that Fianza, in 1896, was a witness to said denunciation made by Hollmann, which shows conclusively that Fianza in 1896 did not pretend to be the owner or occupant of any part of the claim denounced by said Hollmann.

5. The Court failed to take into consideration the undisputed fact that Reavis was in actual peaceful possession of the three mining claims known as the "Otek," "Texas," and "Clayton" since 1901, and was in possession of said claims at the time of the passage of the Act of Congress of July 1st, 1902.

6. The Court erred in not giving due consideration to the evidence of disinterested witnesses to the effect that the only claim denounced in that district prior to American occupation was that knows as the "Hollmann Claim," and that the entire community in that vicinity, including the plaintiffs in this case, recognized the so-called "Hollmann Claim."

7. The Court erred in not giving due weight and credence to the testimony of Reavis, corroborated by Hollmann, to the effect that Reavis had conferred with Holmann prior to taking possession of said claims in 1901, and ascertained from said Hollmann that he had abandoned the "Hollmann Claim."

Manila, P. I., March 16, 1907.

Respectfully submitted,

HAUSSERMANN, COHN & WILLIAMS,
Att'gs for Defendant and Appellant.

439 UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

MANILA, *March* 19, 1907.

GENTLEMEN: This Supreme Court in session of the 18th instant decided the following:

"Informed of a petition presented by Messrs. Haussermann, Cohn and Williams asking a rehearing in the matter of the decision of this Court rendered in No. 2940, Fianza, *et al.*, *vs.* Reavis, the Court said: "Such rehearing is denied."

The above is communicated to you for your information.

(Sig.) J. E. BLANCO,
Clerk of the Supreme Court, P. I.

To Haussermann, etc., and Kinney, etc.

440 UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

MANILA, *March* 22, 1907.

GENTLEMEN: This Supreme Court in session of the 21st instant decided the following:

"The court orders that final sentence be entered in the matter No. 2940, Fianza *vs.* Reavis, and that 10 days having elapsed from the date of this resolution the case be returned to the court of its origin for the effects provided by law."

The above is communicated to you for your information.

J. E. BLANCO,
Clerk of the Supreme Court, P. I.

To Kinney *et al.* and Coudert Brothers.

441 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 2940.

JOSE FIANZA ET AL., Plaintiffs and Appellees,
vs.
J. F. REAVIS, Defendant and Appellant.

Now comes the defendant and appellant in the above entitled action and presents his exception to the resolution dictated in said action by this Honorable Court under date of the 18th instant, denying the rehearing requested by said defendant and appellant.

Manila, March 22, 1907.

HAUSSERMANN, COHN AND WILLIAMS,
Attorneys for the Defendant and Appellant.

442 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 2940.

JOSE FIANZA ET AL., Plaintiffs and Appellees,
vs.
J. F. REAVIS, Defendant and Appellant.

The above named defendant, conceiving himself aggrieved by the decree made and entered on the 6th day of March, 1907, and made final on the 21st day of March, 1907, in the above entitled

cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

This petition is based on the record of said cause in this court which shows that the Act of Congress of July 1st, 1902, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," is involved, and in which the title and possession of real estate exceeding in value the sum of $25,000, U. S. Currency, is involved and brought in question.

Dated this 1 day of April, 1907.

HAUSSERMANN, COHN AND WILLIAMS,
Attorneys for Defendant.

443 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 2940.

JOSE FIANZA ET AL., Plaintiffs and Appellees,
vs.
J. F. REAVIS, Defendant and Appellant.

Now comes the defendant and appellant, J. F. Reavis, by Haussermann, Cohn and Williams, his counsel, and says that in the record and proceedings herein there is manifest error, and that the Supreme Court of the Philippine Islands erred in this, to-wit:

1. The plaintiffs having conceded, and the Court of First Instance and Supreme Court of the Philippine Islands having found as a fact, that the land embraced within the boundaries of defendant's claims was public mineral land which passed to the Government of the United States by the Treaty of Paris, the Supreme Court of the Philippines erred in holding and deciding that said land was not open to entry and location under and pursuant to the mining laws in force in the Philippine Islands subsequent to April 11, 1899.

2. It being conceded by plaintiffs and the Court of First Instance and Supreme Court of the Philippine Islands having found it to be a fact that the defendant, Reavis, actually entered upon the land in question in March, 1901, and located thereon three mining
444 claims known as "Otek," "Clayton," and "Texas" according to the mining laws of the United States, and actually held, possessed and worked the same from said March, 1901, to and including October 1, 1902, the Supreme Court of the Philippine Islands erred in holding and deciding that plaintiffs were, on July

1, 1902, in the possession of and held and worked any mining claim within the boundaries of the said claims located and staked by Reavis in March, 1901, within the meaning of Section 45 of the Act of Congress of July 1, 1902, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes."

3. The Court of First Instance and Supreme Court of the Philippine Islands having found it to be a fact that defendant Reavis, in March, 1901, peaceably and in good faith entered upon public mineral land and located three separate and distinct mining claims and staked and marked each of said claims according to the mining laws of the United States, and did assessment work on each of said claims according to the mining laws of the United States, during said year of 1901, and that subsequent to the passage of the Act of Congress of July 1st, 1902, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," the said Reavis relocated each of said claims and restaked the same according to the said Act of July 1st, 1902, and filed the location notices as required by said Act, said Supreme Court of the Philippine Islands erred in holding and deciding that the Court of First Instance had jurisdiction to oust said Reavis of the possession of said claims, or any part thereof, and to grant the possession of the claims or any part thereof to plaintiffs by injunction proceedings.

445 4. The evidence of the plaintiffs, having shown conclusively that at the time of the filing of the bill or petition in this cause the defendant was in fact in the actual possession of and was working certain mining claims located by him in 1901, according to the U. S. Mining Laws, and relocated on October 1, 1902, under and pursuant to the Act of Congress of July 1st, 1902, the Supreme Court erred in holding and deciding that the order and decision of the Court of First Instance overruling defendant's motion to dismiss said action made at the close of plaintiffs' testimony should not be reversed.

5. In holding and deciding that the order and decision of the Court of First Instance permitting plaintiffs to amend their bill or petition so as to include the description of an alleged claim not embraced or described in the original bill or petition, should not be reversed.

6. The court erred in not finding, under the proofs in the case, that plaintiffs were not in the possession of and did not hold and work any claim or claims for a period equal to the time prescribed by the statute of limitations of the Philippine Islands within the meaning of Section 45 of the Act of Congress of July 1, 1902, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes."

7. The court erred in not finding, under the proofs in the case, that the defendant, John F. Reavis, a citizen of the United States, in March, 1901, openly, quietly and peacefully entered upon public land containing veins and rock in place bearing gold for the pur-

pose of prospecting, and having discovered gold did, in good
446 faith, locate a mineral claim thereon, and mark and define the same according to the mining laws of the United States and give public notice thereof by filing a location notice with the recorder of the Antamok Mining District and that said mining claim was named by said locator "Texas."

8. The court erred in not finding, under the proofs in the case, that the defendant, John F. Reavis, a citizen of the United States, in March, 1901, openly, quietly and peacefully entered upon public land containing veins and rock in place bearing gold for the purpose of prospecting, and having discovered gold did, in good faith, locate a mineral claim thereon, and mark and define the same according to the mining laws of the United States and give public notice thereof by filing a location notice with the recorder of the Antamok Mining District and that said mining claim was named by said locator "Otek."

9. The court erred in not finding, under the proofs in the case, that the defendant, John F. Reavis, a citizen of the United States, in March, 1901, openly, quietly and peacefully entered upon public land containing veins and rock in place bearing gold for the purpose of prospecting, and having discovered gold did, in good faith, locate a mineral claim thereon, and mark and define the same according to the mining laws of the United States and give public notice thereof by filing a location notice with the recorder of the Antamok Mining District and that said mining claim was named by said locator "Clayton."

10. The court erred in not finding, under the proofs in the case, that the defendant, John F. Reavis, continued in possession of each of said mining claims and performed the assessment work on each of said claims as required by the Mining Laws of the United
447 States until the 1st day of October, 1902.

11. The court erred in not finding, under the proofs in the case, that the defendant, John F. Reavis, a citizen of the United States, did on October 1st, 1902, and after the passage of the Act of Congress of July 1st, 1902, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," restake and relocate each of said mining claims according to the provisions of said Act of Congress of July 1st, 1902, and filed the location notices and affidavits with the proper government official; and that said restaking and relocation of each of said mining claims was done openly, quietly and peaceably, and in good faith.

12. The court erred in not finding, under the proofs in this case, that the said defendant, John F. Reavis, was in the actual and adverse and uninterrupted possession of the land embraced within the boundaries of each of said mining claims as relocated and restaked on October 1st, 1902, from said March 1901, to and including the date of the filing of the bill or petition in this case.

13. The court erred in holding and deciding that the court is without power to reverse the findings of fact of the trial court unless

such findings are plainly and manifestly against the weight of evidence.

14. The court erred in holding and deciding that the court is without power to render findings of fact according to the preponderance and weight of the evidence.

448 15. The court erred in holding and deciding that plaintiffs were in the possession of and worked any defined claim on July 1st, 1902, within the meaning of the Act of Congress of July 1st, 1902, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes."

16. The court erred in holding and deciding that plaintiffs held and worked any mining claim or property within the meaning of section forty-five of the Act of Congress of July 1st, 1902, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes."

17. The court erred in holding and deciding that section forty-five of the Act of Congress of July 1st, 1902, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," conferred on plaintiffs any right, title or interest in or to any part of the land within the boundaries of the mining claims known as "Otek," "Texas," and "Clayton," located by defendant as described in the answer of defendant.

18. The court erred in holding and deciding that the evidence is sufficient to entitle the plaintiffs to a perpetual injunction enjoining the defendant from entering upon and developing each, all and every part of the mining claims known as "Otak," "Texas," and "Clayton," located by said defendant as set forth in the answer of defendant.

19. The court erred in holding and deciding that the evidence in this case entitles the plaintiffs to a perpetual injunction
449 against the defendant.

20. The court erred in holding and deciding that the Act of Congress of July 1st, 1902, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," does not entitle the defendant to hold and work the mining claims known as "Otek," "Texas," and "Clayton," located by defendant under and pursuant to the said Act of Congress as shown by the evidence.

21. The court erred in holding and deciding that the Court of First Instance did not commit error in refusing to admit in evidence the book of records for the "Antimoc Mining District," for the years 1901 and 1902, made and kept by the miners of Benguet pursuant to Rules and Regulations adopted by them in conformity with the provisions of Sec. 2324 of the U. S. Revised Statutes.

22. The court erred in holding and deciding that the judgment of the Court of First Instance should be affirmed.

23. The court erred in holding and deciding that the Court of

First Instance had jurisdiction of the subject matter of said cause and to grant an injunction as prayed for by the plaintiffs.

24. The court erred in holding and deciding that the suit in equity can be maintained to recover possession of land within boundaries of mining claims located under and by virtue of the Act of Congress of July 1st, 1902, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes."

HAUSSERMANN, COHN AND WILLIAMS,
Attorneys for Defendant & Appellant.

450 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 2940.

JOSE FIANZA, ET AL., Plaintiffs and Appellees,
vs.
JOHN F. REAVIS, Defendant and Appellant.

Know all men by these presents, that we, John F. Reavis, as principal, and M. A. Clarke, John W. Haussermann and Charles C. Cohn, as sureties, are held and firmly bound unto Jose Fianza in the sum of One Thousand (1000) Dollars, U. S. Currency, to be paid to said Jose Fianza; we bind ourselves and each of our heirs, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated the 2nd day of April, 1907.

Whereas, the appellant in the above entitled suit has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause in the Supreme Court of the Philippine Islands.

Now, therefore, the condition of this obligation is such that if the said appellant shall prosecute said appeal to effect and answer all damages and costs if he fails to make said appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

JOHN F. REAVIS,
By JOHN W. HAUSSERMANN,
His Attorney.
JOHN W. HAUSSERMANN.

451 (Jose Fianza *et al. vs.* J. F. Reavis.)
(Appeal Bond, page 2.)

CHARLES C. COHN.
M. A. CLARKE.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

M. A. Clarke, bearing cedula certificate No. A1500210, issued at Manila on the 7th day of March, 1907; John W. Haussermann,

POOR C

bearing cedula certificate No. A1483025, issued at Manila on January 26, 1907; and Charles C. Cohn, bearing cedula certificate No. A1496317, issued at Manila on February 28, 1907, sureties named in the foregoing bond, being first duly sworn, each for himself, says:—That he is residing in Manila, Philippine Islands, and is worth the sum of One Thousand (1000) Dollars, U. S. Currency, over and above all his just debts and liabilities, exclusive of property exempt from execution.

JOHN W. HAUSSERMANN.
M. A. CLARKE.

Subscribed and sworn to before me this 2nd day of April, 1907.

ANTONIO M. OPISSO,
[SEAL.] *Notario Publico.*
El Nombramiento Termina el 31 *de Diciembre de* 1908.
CHARLES C. COHN.

The foregoing bond is approved this 4th day of April, 1907.

E. FINLEY JOHNSON,
Justice of the Supreme Court of the Philippine Islands.

452 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 2940.

JOSE FIANZA ET AL., Plaintiffs and Appellees,
vs.
J. F. REAVIS, Defendant and Appellant.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

M. A. Clarke, of the City of Manila, Philippine Islands, being duly sworn, on his oath says:—That he is the president of the Benguet Consolidated Mining Co., a corporation organized and existing under the laws of the Philippine Islands; that he knows the value of mining property and mining claims at Antamoc, in the Province of Benguet, Philippine Islands; that he knows the mining claims of the defendant, J. F. Reavis, known as the "Otek," "Clayton," and "Texas," situated at Antamok, Benguet Province, the title to and possession of which are involved in the above entitled cause; that he has been on each of said claims for the purpose of ascertaining the value thereof with the view of purchasing an interest therein; that the value of said mining claims exceeds the sum of Twenty-five Thousand (25,000) Dollars, United States Currency.

(Sgd.) M. A. CLARKE.

Subscribed and sworn to before me this 2nd day of April, A. D. 1907, after having exhibited to me his personal cedula cer-
453 tificate No. A1500210, issued at the City of Manila on the 7th day of March, 1907.

ANTONIO M. OPISSO,
[SEAL.] *Notary Public.*

My appointment expires December 31, 1908.

454 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 2940.

JOSE FIANZA ET AL., Plaintiffs and Appellees,
vs.
J. F. REAVIS, Defendant and Appellant.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

C. M. Eye, of Baguio, Province of Benguet, Philippine Islands, being duly sworn, on his oath says:—That he is a mining engineer and Manager of the Benguet Consolidated Mining Co., a corporation organized and existing under the laws of the Philippine Islands; that he knows the value of mining property and mining claims at Antamoc, in the Province of Benguet, Philippine Islands; that he knows the mining claims of the defendant, J. F. Reavis, known as the "Otek," "Clayton," and "Texas," situated at Antamok, Benguet Province, the title to and possession of which are involved in the above entitled cause; that the value of said mining claims exceeds the sum of Twenty-five Thousand (25,000) Dollars, United States' Currency.

(Sgd.) C. M. EYE.

Subscribed and sworn to before me this 2nd day of April, 1907, after having exhibited to me his cedula certificate No. A550006, issued at Baguio, on the 3rd day of January, 1907.

ANTONIO M. OPISSO,
[SEAL.] *Notario Publico.*
El Nombramiento Termina el 31 *de Diciembre de* 1908.

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455 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 2940.

JOSE FIANZA ET AL., Plaintiffs and Appellees,
vs.
J. F. REAVIS, Defendant and Appellant.

On petition of counsel for defendant and appellant, it is hereby ordered that an appeal to the Supreme Court of the United States of America from the final decree and judgment heretofore rendered and filed in the above entitled cause be, and the same hereby is allowed; and that a certified transcript of the record, testimony, stipulations and all proceedings herein be forthwith transmitted to the Supreme Court of the United States of America.

It is further ordered that a bond on appeal be fixed in the sum of One Thousand (1000) Dollars, U. S. Currency, for costs and damages.

Manila, P. I., April 3, 1907.

J. FINLEY JOHNSON,
Justice of the Supreme Court of the Philippine Islands.

456 Office of the Clerk Supreme Court, P. I. Received Jul- 31, 1907.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Jose Fianza *et als.*, and to Kinney, Odlin and Lawrence, their attorneys, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, to be held at the city of Washington in the District of Columbia, within one hundred twenty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the Supreme Court of the Philippine Islands, wherein Jose Fianza, *et als.*, are plaintiffs and appellees, and J. F. Reavis is defendant and appellant, to show cause, if any there be, why judgment in said appeal should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 29" day of July, 1907, and of the Independence of the United States the one hundred and thirty-first.

E. FINLEY JOHNSON,
Associate Justice of the Supreme Court of the Philippine Islands.

Attest:
R. HERAS,
Clerk of the Supreme Court of the Philippine Islands.

[Seal Corte Suprema, Islas Filipinas.]

Service of the above citation is hereby acknowledged this 29th day of July, 1907.

KINNEY & LAWRENCE,
Attorneys for Jose Fianza et als.

457 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

I, R. Heras, Acting Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in a certain cause pending in said Court, wherein Jose Fianza, Bisguey, Eslau, Anicy and her husband Camantales, Maria and her husband Lumagtao, Alsimey and her husband, Magcelino, and Dahaya and her husband Joaquin were appellees, and J. F. Reavis was appellant, a final judgment was rendered by said Supreme Court on the 22nd day of March, A. D. 1907, in favor of the said Jose Fianza, Bisguey, Eslau, Anicy and her husband Camantales, Maria and her husband Lumagtao, Alsimey and her husband Magcelino, and Dahaya and her husband Joaquin and against the said J. F. Reavis, and that on the first day of April, A. D. 1907, prayed an appeal to the Supreme Court of the United States, which was allowed.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Supreme Court of the Philippine Islands, at Manila, P. I., this first day of August, A. D. 1907.

[Seal Corte Suprema, Islas Filipinas.]

R. HERAS,
Acting Clerk of the Supreme Court of the Philippine Islands.

458 PHILIPPINE ISLANDS,
City of Manila, ss:

I, R. Heras, Deputy Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing Four hundred and fifty-seven pages contain a true and correct translation of the record and proceedings in the case of J. F. Reavis, plaintiff in error, against Jose Fianza et al., defendants in error.

In witness whereof I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this ninth day of August, one thousand nine hundred and seven.

[Seal Corte Suprema, Islas Filipinas.]

R. HERAS,
Acting Clerk of the Supreme Court of the Philippine Islands.

Endorsed on cover: File No. 20,862. Philippine Islands supreme court. Term No. 183. John F. Reavis, appellant, *vs.* José Fianza *et al.* Filed September 25th, 1907. File No. 20,862.

Office Supreme Court, U
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JAMES H. McKENNE

Supreme Court of the United States.

October Term, 1908.

No. 189.

JOHN F. REAVIS,
Appellant,

vs.

JOSE FIANZA et al.

Appeal from the Supreme Court of the Philippine Islands.

BRIEF FOR APPELLANT.

FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
PAUL FULLER,
Counsel for Appellant.
2 Rector St., N. Y.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908, No. 183.

JOHN F. REAVIS,
Appellant,

vs.

JOSE FIANZA *et al.*

Appeal from the Supreme Court of the Philippine Islands.

BRIEF FOR APPELLANT.

Statement of the Case.

This is an appeal by John F. Reavis, the sole defendant, from a final decree of the Philippine Supreme Court, entered on March 6th, 1907, affirming a final decree of the Court of First Instance for the Province of Benguet, entered on April 4th, 1905, which granted a perpetual injunction in favor of the plaintiffs against the defendant, restraining him from interfering with a tract of mining land claimed by plaintiffs.

The suit was begun by the filing of a bill of complaint (Rec., fols. 1-6) in the Court of First Instance of the Province of Benguet on or about January 18, 1904. This bill alleged that José Fianza and his co-complainants had for many years possessed and worked two gold mines called "Antamoc" and "Ampasit" in the barrio of Antamoc in the township of Itogon, Province of Benguet; that *no certain description of said mines could be given*, but that the boundaries "were marked by posts set into the ground"; and that the mines were included in a parallelogram 600

feet by 1,500 feet (Rec., fol. 1). The bill further alleged that in December, 1900, the defendant, John F. Reavis, forcibly and wrongfully took possession of the mines and excluded plaintiffs therefrom, and that in October, 1902, he again entered upon said mines, set stakes thereon and filed a notice of location with the Mining Recorder of Benguet (Rec., fols. 2-3). It further alleged that the plaintiffs had no recorded title to the mines but were nevertheless by virtue of long possession the owners thereof (Rec., fols. 3-4). It further alleged that the defendant had illegally taken gold from the plaintiffs' mines to the extent of $4,000 (Philippine Currency) and that plaintiffs had suffered damage to the extent of $6,000 (Philippine Currency) for which judgment was demanded (Rec., fol. 5). These demands for money damages appear to have been wholly abandoned at the trial.

General equitable relief by way of injunction and accounting was demanded (Rec., fol. 5).

Upon the filing of the bill a preliminary injunction was issued, apparently *ex parte*, restraining the defendant from interfering with or disturbing the plaintiffs' alleged possession (Rec., fol. 8). The plaintiffs thus obtained a possession protected by the Court in advance of any trial or hearing whatever.

On March 18, 1904, the defendant answered, denying all the material allegations of the bill (Rec., fol. 10) and alleging, as an affirmative defence, an actual location by him of certain mining claims, actual possession thereof from March, 1901, until October, 1902, a relocation of said claims on that date pursuant to the provisions of the "Philippine Bill," and actual working and possession thereunder until the service of the injunction in this case (Rec., fols. 11-12).

The defendant then prayed for dissolution of the preliminary injunction and dismissal of the bill, but asked for no affirmative relief (Rec., fol. 12).

The case was tried at great length during the month of May, 1904, in the Court of First Instance (Rec., pp. 13-

136), and was decided on April 4th, 1905, in favor of the plaintiffs. The preliminary injunction was made perpetual, but no other relief was awarded. The opinion of the Trial Justice occupies 54 pages of the printed Record (Rec., pp. 157-211), and constitutes an elaborate treatise on Mining Law generally. The defendant moved for a new trial under Sec. 497, Subd. 3, of the Philippine Code of Procedure (Act No. 190, Phil. Com.) on the grounds: "(1) That the findings of fact were plainly and manifestly against the weight of evidence. (2) That the evidence was insufficient to justify the decision. (3) That the decision and judgment of the Court is against the law" (Rec., fol. 333). This motion was denied and due exception was taken by the defendant (Rec., fol. 334).

The case was then reviewed by the Philippine Supreme Court upon a bill of exceptions in the usual manner, and on March 6, 1907, the judgment below was affirmed by a divided court. Mr. Justice Willard wrote for affirmance (Rec., fols. 337-357). With him concurred Chief Justice Arellano and Justices Torres and Mapa (7 Phil. Rep., at p. 630). Justices Tracey and Johnson both wrote dissenting opinions, and Justice Carson concurred with Justice Johnson (Rec., fols. 358, 359-435, 7 Phil. Rep., pp. 630, 685).

The case was then duly brought to this Court by this appeal, upon which the defendant seeks a review on both the law and the facts, contending that plaintiffs' possession was not such as to give them any rights under Sec. 45 of the Philippine Act (32 U. S. Stat., at p. 703), and that in any event plaintiffs were not entitled to an injunction.

Statement of Facts and Review of the Evidence.

It appears from the testimony that for many years a family of Iggorrotes, of which the plaintiffs are members, had been in the habit of mining for gold in a very primitive fashion on the slopes of a mountain called Antamoc.

Part of the mountainside appears to have been styled Ampasit, but the general name for the whole region was Antamoc (Rec., fols. 22, 37). How, and under what Iggorrote customs, the plaintiffs derive their present claim of title from Dominguez or Toctoc, the alleged former owners, does not appear. The finding of the Trial Court was that the plaintiffs and their predecessors had had for many years "*sole and exclusive possession*" of the mines (Rec., fols. 266, 267), but this is wholly unsupported by the evidence. On the contrary it affirmatively appears by the plaintiffs' own witnesses that there were "excavations all over the mountain" which were "made by many Iggorrotes" (Rec., fol. 38), and the contention that all these were workmen for Fianza or his father Dominguez is supported only by hearsay—"according to rumor" as one of the witnesses (Caoili) put it (Rec., fol. 49). There is no evidence whatever of continuous *exclusive* possession of one single definitely identified square foot of mining territory by any of the plaintiffs or their predecessors. They were simply the principal miners in a territory open to all, just as they were the leading men in the native community.

The plaintiff Fianza himself testified (Rec., fol. 23):

> "There are many excavations in Antamoc and Ampasit. The excavations are not the same * * * some are one fathom deep and some two fathoms deep. Our custom is if we do not find gold in one fathom or two fathoms we make another place until we do find something."

This accords with the testimony of Mr. Clyde (Rec., fol. 162):

> "The custom among the Iggorrotes was to dig little holes and follow up little stringers where they could see a little free gold and then they would put the rocks on the rocks and grind it out and sold it for what they could get for it."

As we shall show hereafter, *no definite boundaries for the mining territory claimed by Fianza and his co-plaintiffs were fixed or marked out by any visible monuments until after the controversy with Reavis had become acute.*

In addition to the apparent right or privilege of any Iggorrote to work in the territory, there were two definite and fully proved adverse claims made during the Spanish régime, which broke the continuity of such possession as Fianza or his predecessors may have had.

In or about 1896 one Vicente Carrera, acting for and in the name of Agustin Illera, "denounced" two mining claims called Antamoc and Ampasit, apparently covering some or all of the territory now claimed by plaintiffs, built a trail leading to them, marked the posts, and made the required deposit. He met Dominguez, Fianza's father, and bought gold from him and from other Iggorrotes, and none of them made any objection to his locating his claims (Rec., fols. 41-43). There is no suggestion that any attempt was made by any of the Iggorrotes to exclude Carrera or to assert any adverse right of exclusive possession against him.

The "denouncement" by Carrera was not followed up, and very shortly thereafter Hans Holman made a location in the same territory. He staked out claims covering 120,000 square metres, filed his papers, and appears to have become generally known as the owner of the mines (Rec., fols. 144-146, 114; 118, 122, 123, 128, 136, 164, 165, 170, 180, 183, 185, 186, 228). Fianza testified that he knew Holman and knew of his stakes; that they included *all his property, both Ampasit and Antamoc;* and that they remained there until Mr. Wagner came (Rec., fol. 28). This was in May, 1902 (Rec., fol. 81), so that the posts must have remained for some six years, indicating through all this time an outstanding claim, adverse to plaintiffs. One of these stakes, which was found by Reavis when he first went upon the property, was still inscribed in blue pencil "H. Holman, registered 1896" (Rec., fol. 113).

Some of Fianza's testimony in regard to the Holman claim shows either a very treacherous memory or a complete disregard for the truth. He testified (Rec., fol. 28):

> "Q. Do you know a man by the name of Hans Holman?
>
> A. Yes, I have known a man by that name.
>
> Q. Do you know of the mines that he located during the Spanish times?
>
> A. I know that during the revolution or insurrection this man Holman wanted to usurp my mine and I went to present myself to Governor Pack to protest and then he (Governor Pack) wrote to Holman, who was in Manila, but he, Holman, answered and said give those mines to Fianza because they are his. No, it was a telegram that was sent to him and which he answered."

Now, Holman's location was in 1896, three years before the cession of the Islands to the United States, and Governor Pack did not come to Benguet as Governor until November 15th, 1901 (Rec., fol. 76). The complaint which Fianza made to Governor Pack was in the spring of 1902, and was not against Holman, but against Reavis. Governor Pack, called as a witness for plaintiffs, testified that on the informal hearing before him (Rec., fol. 78):

> "Fianza claimed a *pertenencia* of mining ground in the district of Antamoc, and from what he said it had been handed down to him from his fathers and from which *he claimed he was driven by one Holman. He had abandoned this territory now.*"

Thus, we have plaintiff's own admission, proved by one of his own witnesses, of a totally different state of facts from that testified to by plaintiff himself, and of a complete interruption of his alleged possession from 1896 to 1902.

Governor Whitmarsh (Governor Pack's predecessor)

also testified that Fianza talked with him about the Antamoc mines, and said "that Holman owned the place where they were" (Rec., fol. 185).

Reavis, the defendant, came upon the scene in Antamoc in February, 1901, prospecting for gold. He found it in Antamoc mountain, "located several claims, put up the stakes, made out the location papers, got them recorded by the recorder Mr. Clyde, who lived in Antamoc" (Rec., fol. 106). These locations were made in March, 1901 (Rec., fols. 164, 166), by posting stakes and filing notices with a so-called Mining Recorder, elected by the American Miners in the district in an attempted compliance with the United States mining laws (Rec., fol. 270). Reavis remained in possession and worked the claims until excluded from a part thereof by the injunction in this case.

In June or July, 1901, Fianza appears to have made some sort of a complaint against Reavis to Governor Whitmarsh, but in view of the then unsettled state of the mining laws, no official action was taken in the matter (Rec., fols. 25, 189, 190).

On May 6th, 1902, occurred the informal hearing before Governor Pack already mentioned. No official determination was made, and Fianza withdrew his complaint upon an agreement by the parties for a *modus vivendi* on the following basis: "That Fianza could continue working that ground as he had heretofore without opposition, *but that Mr. Reavis would not abandon his claim as staked*" (Rec., fol. 79). This disposition of the matter simply preserved the existing legal situation, whatever it might be, and averted physical conflict (Rec., fol. 80).

Immediately after this, and on May 9, 1902, Mr. J. O. Wagner, a government clerk, went to Antamoc with Fianza, put up four posts and made a memorandum of the approximate courses and distances (Rec., fols. 81-83). The claim thus indicated was stated to be "1,500 lineal (linear) feet" and the posts were stated to be set

"300 feet from the center line of said claim" (Rec., fol. 257).

This was doubtless intended to be the "parallelogram 600 feet by 1,500 feet" mentioned in plaintiffs' bill (Rec., fol. 1). The so-called "location notice" (Exh. O, Rec., fol. 257), based on this staking out, prepared by Wagner, was never filed, but was kept by Fianza (Rec., fol. 29).

Such was the situation when the Philippine Bill, providing a Mining Code for the Islands (32 U. S. Stat., pp. 697-706, Secs. 20-62), was enacted on July 1st, 1902. At that time Fianza was making certain indefinite claims to mining rights on Antamoc mountain, based on alleged ancient possession; there were apparent adverse claims, unperfected but nevertheless outstanding, in Holman and in Illera; and Reavis had been in actual possession since March, 1901, and had attempted to comply with the formalities prescribed by the mining law applicable in the United States. In October, 1902, doubtless immediately after information of the Act of July 1st, 1902, reached Benguet, Reavis complied with its requirements and filed regular location notices for his three claims (Rec., fol. 193, Deft's Exhs. F. G. and H., 246, 248, 250).

Nothing further was done towards fixing the boundaries of plaintiff's claim until after this suit was begun. In February, 1904, Fianza had a survey made by Balpiedad, a surveyor (Rec. fols. 33, 89). This surveyor did not place any posts (Rec., fol. 98) but found *fourteen* already there (Rec., fol. 90), which plaintiffs claim were those placed by Wagner (Rec., fol. 101) although Wagner testified that he placed only *four* (Rec., fol. 83). Fianza testified that he indicated the boundaries to Balpiedad and that "the boundaries are the same that my father showed to me" (Rec., fol. 100). This is the only scintilla of evidence to connect the boundaries, as at present claimed, with plaintiffs' claim of ancient possession.

It is also to be observed that the Balpiedad survey,

which shows an irregular tract of about 2,000,000 square feet, (Plfs. Exh. C., Rec., after p. 146) is greatly at variance with the territory indicated by plaintiffs' so-called "notice of location" of May 9, 1902 (Exh. O, Rec., fol. 257), and also with the "parallelogram 600 feet by 1,500 feet" claimed in the complaint. The map or plan itself was not drawn until after the trial was well under way (Rec., fol. 94) and was not produced on the trial until plaintiffs' case in chief was practically concluded (Rec., fol. 89). It seems to have been treated as if in evidence, but we have searched the Record in vain for any statement of its offer and admission.

Specification of Errors.

The Assignment of Errors filed with the Petition of Appeal herein (Rec., fols. 443-449) sets forth in considerable detail the principal errors complained of in the judgment of the Philippine Supreme Court. For the purpose of this argument, they may be more briefly summarized as follows:

1. That the Court erred in not reversing the judgment below on the facts, as being plainly and manifestly against the weight of evidence.

2. That the Court erred in holding that plaintiffs had acquired any right or title in or to the mines in question, by adverse possession or otherwise.

3. That the Court erred in holding that the defendant had not acquired any rights in said mines by his proceedings under the Act of July 1, 1902, or otherwise.

4. That the Court erred in holding that plaintiffs were entitled to an injunction against defendant.

5. That the Court erred in not reversing the judgment

below for the exclusion of competent and material evidence.

Brief of the Argument.

APPELLANT'S CONTENTIONS.

On behalf of the defendant-appellant we contend:

1. That this Court has jurisdiction on this appeal to review the facts as well as the law.

2. That the judgment of the Court of First Instance was plainly and manifestly against the weight of the evidence especially in the following particulars:

   (a) In finding that the plaintiffs had had or claimed *exclusive possession of any definitely identified territory* at any time prior to the suit.

   (b) In finding that the plaintiffs had had *uninterrupted and exclusive possession for ten years* prior to the suit.

   (c) In finding that the defendant had not had *actual possession* from the time of his entry in March, 1901, until the beginning of the suit.

3. That the plaintiffs had no title to the mines in question at the time of the cession of the Philippine Islands to the United States, and have not acquired any since.

4. That in any event plaintiffs were not entitled in this suit to an injunction against the defendant.

5. That there should be a reversal for the exclusion of competent and material testimony.

POINTS.

POINT I.

This Court has jurisdiction on this appeal to review the facts.

The jurisdiction of this Court, under 32 U. S. Stat., p. 695, Sec. 10, is based on the fact that the "title or possession of real estate exceeding in value the sum of $25,000" is involved (Rec., fol. 442), and also on the fact that the construction of a United States Statute (Act of July 1, 1902, Sec. 45; 32 U. S. Stat., p. 703) is in question.

The cause was properly brought here by appeal, since it is in the nature of a suit in equity. The relief demanded and granted below was an injunction and thus of a purely equitable character, and the bill of complaint was expressly entitled "In Chancery" (Rec., fol. 1). The facts as well as the law are, therefore, before this Court for review under the decision in De la Rama *v.* De la Rama, 201 U. S., at p. 309.

POINT II.

The judgment of the Court of First Instance was plainly and manifestly against the weight of evidence.

This contention is so conclusively demonstrated by the exhaustive dissenting opinion of Mr. Justice Johnson (Rec., pp. 226-263), that we beg this Court to consider such opinion as adopted as a part of our brief on this Point. We have also shown in our Statement of Facts a number of instances in which the Trial Court's findings are at variance with the undisputed evidence,—often of plaintiffs' own witnesses.

The three subjects of most importance in this regard are:

A. The indefiniteness of the boundaries of plaintiffs' claim.
B. The character of plaintiffs' possession as to continuity and exclusiveness.
C. The character of defendant's possession.

We shall consider these points in order.

A.

Indefiniteness of Boundaries.

The Trial Court held that for more than fifty years before the commencement of this suit the plaintiff Fianza, his father Dominguez, and his grandfather Toctoc, were in sole and exclusive possession of certain mineral lands, being those in dispute in this case, of irregular boundaries, and containing about 183,000 square metres. (Rec., fols. 104, 267.)

Now as to the father and grandfather there is no evidence whatever to support this finding. As pointed out by Mr. Justice Johnson (Rec., pp. 228-230), the only identification of the mines claimed to have belonged to Dominguez and Toctoc is that they were "in Antamoc," where there were numerous mines. (Rec., fol. 200.) No boundaries or dimensions for plaintiffs' mines are even remotely suggested. Plaintiffs' own bill of complaint stated that no certain description of the mines could be given, and made an indefinite claim of a parallelogram 600 feet by 1,500 feet, or 900,000 square feet in area (Rec., fol. 1). The first attempt at physical demarkation was the staking out by Wagner in 1902, after the defendant had made his first location in 1901, and after the truce without prejudice had been arranged by Governor Pack. The plot staked out by Wagner appears to have been of the same area as that indicated in the complaint. *The*

Balpiedad survey, however, on which the judgment was based, and which was made during the trial, indicated irregular boundaries and an area of 183,000 square metres, or nearly 2,000,000 square feet, more than twice the area claimed in the complaint. This discrepancy certainly deprives of any weight Fianza's statement that the boundaries he indicated to Balpiedad are the same which his father had shown him. (Rec., fol. 100.)

The remarkable manner in which the *four* stakes, set out by Wagner before the suit was begun, had increased and multiplied to *fourteen* when Balpiedad made his survey in 1904 is another very suspicious circumstance, as pointed out by Mr. Justice Johnson (Rec., fols. 371-377).

If there had been any anciently known and recognized boundaries or monuments, that fact could have been proved, and ought to have been proved, by some of the older generation of Iggorrote witnesses who testified for the plaintiffs. The overwhelming weight of evidence is that plaintiffs and their ancestors claimed some general right to mine for gold "in Antamoc," that no boundaries were ever thought of until after Reavis had made his location, and that the boundaries recognized by the judgment were not fixed until some time during the trial.

This manifest error alone is sufficient to require reversal. Moreover, in view of the indefinite and uncertain character of the boundaries of plaintiffs' claim, whatever might be its validity otherwise, it, "like other indefinite and uncertain interests in lands, will be void for uncertainty" (See U. S. *v.* Castillero, 2 Black, 1, at p. 191), and thus wholly insufficient to support an injunction.

B.

Plaintiffs' Possession.

The Trial Court found that the possession of plaintiffs and their ancestors was "to the exclusion of any and all

other claimants and without interference or adverse claims of any kind" (Rec., fol. 267).

This is absolutely unsupported by and contrary to the evidence. There is not one syllable of proof that Toctoc or Dominguez ever excluded anybody who wished to mine for gold in any part of Antamoc mountain. They undoubtedly mined there themselves; they apparently held some position of chieftainship; and some of the poorer Iggorrotes worked for them, looked up to them as "Jefes" or Chiefs, and sold them such gold as they found themselves (Rec., fols. 71, 74, 232). Some time in the Eighties, Dominguez was "Gobernadorcillo" (Rec., fol. 47), and as such doubtless exercised some general control over the region. It is evident from Fianza's own testimony that native mining was very promiscuous as to location (Rec., fol. 23), and defendant's witnesses testified without contradiction, in regard to the Iggorrote custom of mining, that an Iggorrote miner

> "will find a small little stringer as we call them where you can see some free gold in. Well, he will work that out until he gets tired of it and he will go off to some other place, find another one. May be, *some other Iggorrote will come along and go into the one that he has left and work that a while*, and in that way they have run over the whole country and worked in a little hole here and a little hole there, and they work it until they are tired of it and then go some place else." (Rec., fol. 231).

It was also testified that an Iggorrote miner does not exclude others at all.

> "He just claims the little hole that he is in, about two by four, just big enough to crawl in" (Rec., fol. 231).

This quite agrees with Wagner's description of plaintiffs' mine as "a hole in the ground" about four feet in diameter (Rec., fol. 87).

It does not appear just when Dominguez died and Fianza became "Jefe." The Trial Court found that it was about ten years before the commencement of the suit (Rec., fol. 267). Fianza testified in 1904 that it was more than ten years ago (Rec., fol. 20). Plaintiffs' witness, Madarang, testified that Dominguez was "Chief of these mines" as late as 1891 (Rec., fol. 36). Carrera, another witness for plaintiffs, who came to Benguet in 1894 or 1895, testified that he knew Dominguez and that Dominguez and his family made no objection to his locating his claims (Rec., fols. 41-43), thus establishing that there was no claim of exclusive right at that time. Velancio, who has lived in Antamoc since 1894, testified in answer to the question: "Who worked in those mines in Spanish times?"—"The Iggorrotes who lived there, *and any other Iggorrotes who wanted to work there.*" (Rec., fol. 135.)

When Holman came prospecting in Benguet in 1895 or 1896, Fianza had apparently succeeded Dominguez. Holman testified that Fianza made no claim of exclusive ownership and that "whoever liked could get gold from that mine. *Any one could get gold from that mine.*" Not only did Fianza not complain, but he even signed Holman's "*denuncia*" (Rec., fols. 145, 146). Fianza admitted that he knew Holman and had signed some paper for him, although he naturally claims now that he did not know what it was (Rec., fol. 219). In view of his manifestly false or mistaken testimony about having complained to Governor Pack (who came to Benguet in 1901), "that Holman wanted to usurp my mine," and that Governor Pack telegraphed to Holman to give the mines back to Fianza, Fianza's testimony cannot be accepted as conclusive. Holman staked out his claims in 1896 and again in 1898 (Rec., fol. 146). He had Iggorrote laborers work the mines for him and sell him the gold (Rec., fol. 150). They were not allowed to sell to any one else (Rec., fol. 228). Whatever may have been the relative legal rights of Fianza and Holman, it is quite

evident that Holman's *possession* displaced Fianza's, if Fianza ever had or at that time claimed actual possession. Governor Pack testified that in 1902 Fianza claimed that he had been driven out by Holman and had abandoned the mine, and that it was during this period of abandonment that Reavis had entered and staked it out:

> "He had abandoned this territory now, and Mr. Reavis had staked it out for himself in mining claims and told him (Fianza) that he (Fianza) could not work there any longer" (Rec., fol. 78).

The evidence is thus uncontradicted that as to so much territory as was included in Holman's claim, Fianza was not only not in exclusive possession but was actually out of possession from 1896 to 1902.

Through all this time Holman was generally and publicly known as the owner of the Antamoc mines. Mr. Knouber testified (Rec., fols. 117, 118): "This man Fianza said that he knew the property and knew it belonged to a Mr. Holman. * * * It was all Mr. Holman's property."

Mr. Clyde in answer to the question: "Did you prospect generally over the Antamoc District?" replied, "Yes, I looked around quite a bit. The Iggorrotes told me that it belonged to Holman." (Rec., fol. 164.)

Mr. Iams testified (Rec., fol. 170): "The Secretary of the barrio * * * told me that property there belonged to Mr. Holman. * * * Reavis' claims would be inside of the lines that they claimed belonged to Holman at that time."

Mr. Steuber testified (Rec., fol. 180): "From what I understood from the Iggorrote there, he said that Reavis was foolish to work those mines, as they belonged to Holman."

Governor Whitmarsh testified (Rec., fol. 186): "Some Iggorrotes whom I met in Antamoc pointed at the hill of Antamoc as belonging to Holman."

Fianza's own admission to Governor Pack is thus fully corroborated.

The gold obtained by plaintiffs in 1901, 1902 and 1903, upon which so much stress was laid by the Trial Court (Rec., fol. 268) and by Mr. Justice Willard (Rec., fol. 353), was doubtless obtained from some other of the numerous burrows on Antamoc mountain. There were "Iggorrote tunnels all over that mountain and other mountains" (Rec., fol. 200). There is no proof whatever that this gold was taken from the claims described in the complaint or the judgment.

In 1901, the defendant entered and ousted any remaining possession that plaintiffs may still have had. This is shown by defendant's uncontradicted testimony, by Fianza's statements to Governor Pack and Governor Whitmarsh, and by the very allegations of plaintiffs' own Bill of Complaint. (Rec., fol. 2.)

The finding of *exclusive and continuous possession* is thus not merely against the *weight* of evidence but directly contrary to the testimony and admissions of plaintiffs' own witnesses, and plaintiffs' pleading.

C.

Defendant's Possession.

The Trial Court found that on July 1, 1902, when the Philippine Mining Law was enacted, "the defendant had only a constructive possession" (Rec., fols. 279, 317). This is directly contrary to the evidence. Defendant had entered and made his first location in March, 1901, and, as the Trial Court itself finds, he did so in the honest belief that he was taking up an abandoned Spanish grant and without knowledge of any adverse Iggorrote claim (Rec., fol. 279). We quote the 14th finding in full:

> "The Court finds that the defendant John F. Reavis entered upon the mines owned and claimed by the plaintiffs in the year 1901, and staked out his three claims thereon under the honest (though mistaken) belief that the same was included in an abandoned and forfeited Spanish grant of one Hans Holman and that at the time of his first entry thereon and the setting of his stakes he had no actual knowl-

edge that the Iggorrotes who were then living upon the lands claimed the ownership of said mines."

He saw Holman, and Holman disclaimed in his favor, saying "If you like to work, you work. I do not care about the mines" (Rec., fol. 151). He kept his possession exclusive until the informal hearing before Governor Pack (Rec., fols. 40, 78), and, even under the *modus vivendi* then arranged, his possession remained actual. To avoid the possibility of a breach of the peace, he agreed for the time being to allow Fianza to go on working in his casual Iggorrote fashion, while he himself continued his "assessment work" sufficient to keep his rights alive (Rec., fol. 79). To find, as the Trial Court did, that Reavis thus relinquished any rights of possession or otherwise that he had before, is to pervert the whole object and purpose of Governor Pack's extra-official mediation and turn the defendant's desire to keep the peace and abide by the decision of the law into a waiver of legal rights.

We have thus shown that on these three essential points:—the definiteness of the boundaries of plaintiffs' claim; the character of plaintiffs' possession; and the character of defendant's possession;—the judgment of the Trial Court was contrary to the evidence and should have been reversed.

Moreover, at the time this case was decided by the Philippine Supreme Court, its power to review questions of fact had been greatly enlarged by Act No. 1596 of the Philippine Commission, amending Sec. 497 of the Philippine Code of Procedure, so as to make the test "the preponderance of evidence," and do away with the former requirement for reversal, viz., that the judgment reviewed should be "plainly and manifestly against the weight of evidence."

Mr. Justice Tracey wrote a separate dissenting opinion on this point (Rec., fol. 358), and it must have been

further called to the attention of the Court by the motion for rehearing (Rec., fols. 437, 438).

The decision was rendered on March 6th, 1907. Act No. 1596 took effect on its passage, February 25, 1907. Its material provisions are as follows:

> "SEC. 1. * * * But the Supreme Court may review the evidence taken in the Court below, and, after giving due weight to the fact that the judge who tried the case saw the witnesses when they testified, affirm or reverse by a preponderance of the evidence, or modify by such preponderance, the judgment there rendered, as justice may require, in the following cases.
>
> * * * * * *
>
> 2. If the excepting party filed a motion in the Court of First Instance for a new trial, upon the ground that the evidence was insufficient to justify the decision, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence and make such findings upon the facts by a preponderance of the evidence, and render such final judgment as justice and equity may require.
>
> * * * * * *
>
> SEC. 4. This Act shall take effect on its passage, and cases now pending in the Supreme Court shall also be subject to its provisions.
>
> Enacted, February 25, 1907."

(No. 1596, Acts of Phil. Com. Vol. X, War. Dept. Report, 1907, p. 91.)

We respectfully submit that the case should have been decided by the Court below, and should now be decided by this Court, according to the preponderance of evidence, and that such preponderance is overwhelmingly with the defendant, especially in view of the burden upon the plaintiffs to prove their case by evidence sufficient to establish continuous and exclusive possession for the requisite period of a *locus* with definite boundaries.

POINT III.

Plaintiffs had no title to the mines at the time of the cession of the Philippine Islands, and have not acquired any since that time.

It is familiar and elementary law, both under our system and that of Spain, that mines of precious metal constitute a peculiar species of property especially subject to the control of the Government, and can be acquired in private ownership only by compliance with such regulations as the Government may prescribe.

See "Translation of the Mining Law and Regulations in force in the Philippines," War Department, July, 1900, as follows:

> "Royal Decree of May 14, 1867, relating to mining in the Philippines.
>
> Chapter 1.—*The objects of mining;*
>
> Art. 1. Precious stones, and all substances properly metalliferous, combustible, and saline, calcareous phosphates, whether found on or below the surface of the ground, in whatever state, whether solid, liquid, or gaseous, are the objects of mining.
>
> Art. 2. The ownership of the substances mentioned in the foregoing article is vested in the State, and no one may dispose thereof without a concession issued by the governor-general."

See also U. S. *v.* Castillero, 2 Black, 1, *passim.*

Under neither system of law does ownership or possession of the surface confer ownership of the minerals below the surface, or vest the possessor of the surface with mining rights (U. S. *v.* Castillero, *supra*, at pp. 166-168). Moreover, it does not appear that plaintiffs ever asserted any claim to the property except for mining purposes.

In this case, the labors of both Court and Counsel are lightened by the fact that there is no claim that the plaintiffs ever acquired any title or property right in and to the mines in question under Spanish law. Their position at the time of the cession is thus stated by the Trial Court (Rec., fol. 290):

> "Fianza and his co-claimants had no interests in these mines that Spain recognized and none that the United States was under obligation either in law or in equity to recognize or respect. They were trespassers as against both governments, before and after the treaty, and under Spanish sovereignty at least this trespass was a criminal one."

After the date of the cession (April 11, 1899), and until the enactment of further legislation by Congress, the Spanish Mining Laws continued in force under the doctrine of Strother *v.* Lucas, 12 Pet., 410, 436, but there was apparently no administrative machinery for their execution, and certainly no attempt was made on the part of plaintiffs to acquire any rights thereunder (See Rec., fols. 290-291). The Act of Congress of March 2, 1901, (31 U. S. Stat., 910) forbade for the time being any Government grant of mining rights (Rec., fol. 292), and thus suspended any possibility of recourse to the former law. Therefore the plaintiffs necessarily remained in the status of mere trespassers, so far as they had possession at all, up to July 1, 1902, when the Philippine Bill was enacted. This was recognized by the Trial Court (Rec., fol. 291). Consequently, unless plaintiffs have received or acquired some rights of property under the Act of July 1, 1902, they have none now, and their possession, if any, is still that of trespassers.

The material provision of this Act is Sec. 45 (32 U. S. Stat. at p. 703):

> "That where such person or association, they or their grantors have held and worked their claims for

a period equal to the time prescribed by the statute of limitations of the Philippine Islands, evidence of such possession and working of the claims for such period *shall be sufficient to establish a right to a patent thereto under this Act, in the absence of any adverse claim;* but nothing in this Act shall be deemed to impair any lien which may have attached in any way whatever *prior to the issuance of a patent.*"

This is almost identical in phraseology with Sec. 2332, U. S. Rev. Stat., which accepts, as a sufficient basis for a patent, possession for "the time prescribed by the statute of limitations for mining claims of the state or territory where the same may be situated." The two statutes are printed in parallel columns on page 204 of the Record.

This provision is not self-executing; it does not of itself confer any title upon persons who have held and worked a claim for the period of limitation, which in the Philippines is ten years for all interests in real estate (Philippine Code of Procedure, Secs. 40, 41). It merely prescribes what evidence shall entitle a certain class of claimants to a patent or government grant under the Act. In order to get the benefit of this provision, therefore, the claimant must make his application for a patent, comply with the procedural formalities prescribed by Section 37 of the Act, and, if an adverse claim is made during the period of publication, contest its validity in the Courts as prescribed by Sec. 39. The principal requirements of Sec. 37 are briefly as follows:

(a) Location of the claim by putting out stakes and recording claim with the Mining Recorder under Secs. 22-31.

(b) Filing application for patent, with plat and field notes, in the office of the Mining Recorder.

(c) Posting notice of application on the claim itself and filing copy of notice with proof of posting.

(d) Publication of notice for sixty days.

(e) Filing of proof by affidavit of the facts showing claimant's right to patent.

(f) Determination of adverse claims, if any.

(g) Payment of $5 per acre.

There is no suggestion in the Record, and no claim whatever is made, that plaintiffs have ever complied or attempted to comply with a single one of these requirements.

Sec. 61 of the Act expressly provides:

> "That mining rights on public lands in the Philippine Islands shall, after the passage of this Act, be acquired *only in accordance with its provisions*" (32 U. S. Stat., at p. 706).

Since the Act itself did not confer ownership upon the plaintiffs, but merely indicated how they might acquire a patent, and since they have not subsequently acquired any rights "in accordance with its provisions," the conclusion inevitably follows that plaintiffs have no present rights of ownership whatever in the property, directly enforceable by any Court. Whether they may still have a right to apply for and obtain a patent, is a wholly different question, not before this Court for decision.

In other words, they may or may not have a *jus ad rem*, but they have not a *jus in re*. The distinction is aptly pointed out by Mr. Justice Curtis in "The Young Mechanic," 2 Curt., 404, at 412 (30 Fed., Cas. No. 18,180) as follows:

> "A *jus in re* is a right, or property in a thing,

> valid as against all mankind. A *jus ad rem* is a valid claim on one or more persons to do something, by force of which a *jus in re* will be acquired."

See also The Carlos F. Roses, 177 U. S., 655, at 666.

Until the plaintiffs have successfully asserted as against the Government their claim to a patent as a *jus ad rem*, they cannot acquire a *jus in re* in the property itself, enforceable "as against all mankind" including this defendant.

There is nothing in the evidence or in the findings to indicate or suggest that the defendant's acts have in any way interfered with plaintiffs' ability to assert their *jus ad rem* as against the Government, so as to call for the intervention of a Court of Equity to protect it. Their bill of complaint asserts a *jus in re*, and this they have failed to prove.

Section 2332 of the U. S. Revised Statutes, corresponding to Section 45 of the Act of July 1st, 1902, has been thus interpreted by one of the leading authorities on Mining Law:

> "One basing his right to a patent on the ground that he has held the claim for a period which satisfies the statute of limitations of his state or territory must proceed to obtain his patent the same as if his right vested on location, with the exception of the manner by which he proves his title."

Lindley on Mines, Vol. II, §688, p. 1276, citing In re Smith Brothers, 7 Copp's L. O. 4.

The purpose and effect of the statute has been held to be to raise a presumption of regularity of the original location from the fact of long and unquestioned possession, and to enable proof of such possession to be accepted by the Land Office in lieu of proof of compliance

with all the detailed statutory requirements of a valid location.

See Buffalo Zinc & Copper Co. *v.* Crump, 69 Southwestern Rep., 572 (Sup. Ct., Ark., 1902).
Cleary *v.* Skiffich, 28 Col., 362.
McCowan *v.* Maclay, 16 Mont., 234.

In the case at bar there is no suggestion that any "location," regular or irregular, valid or invalid, was ever made by plaintiffs.

Statutory "location," and possession for the requisite period, are simply different methods of acquiring a mining title. Even assuming that such possession is equivalent to "location," a controversy between adverse claimants, one asserting possession and the other "location," is one to be determined only by recourse to the procedure prescribed by the Mining Law, as we shall show more fully under Point IV, *infra*.

It is very significant that there appears to be no case in the books in which a party claiming simply by naked adverse possession, with no attempt at "location" under the statutes, has been awarded relief, either legal or equitable, against an adverse claimant who has made a statutory location. The general rule is that rights founded on mere possession must yield to rights created by compliance with the statutory requirements.

See Horswell *v.* Ruiz, 67 Cal., 111.
Kendall *v.* San Juan Mining Co., 144 U. S., 658.

The case of Belk *v.* Meagher, 104 U. S., 279, is an authority in favor of defendant, as demonstrated by the opinion of Justice Johnson (Rec., at fol. 418), to which we beg to refer the Court.

As Reavis' adverse entry was expressly found to have been peaceable (Rec., fol. 279) it necessarily "operated as an ouster which broke the continuity of plaintiffs' holding" (to quote from Belk *v.* Meagher, p. 287), and thus

prevented plaintiffs from acquiring title by continuing their possession until the Act of 1902 could give it a legal effect.

Moreover, as we have shown under Point II, plaintiffs have wholly failed to prove the possession required by the Philippine Statute of Limitations:—"Actual, open, public, continuous, under a claim of title exclusive of any other right and adverse to all other claimants" (Philippine Code of Procedure, Sec. 41), or as defined by the Court in Hamilton *v.* South. Nev. Gold & Silver Min. Co., 33 Fed., 562, "open, notorious, exclusive and continuous, and not a loose, uncertain, scrambling and mixed possession." Plaintiffs' possession was neither exclusive, nor public, nor continuous; it was "*loose, uncertain, scrambling and mixed.*" It was broken by Carrera, by Holman, and by Reavis himself, all within the ten years preceding the enactment of the Philippine Bill. It is evident from Fianza's own testimony, and his statements to Governor Pack and Governor Whitmarsh, that the entries of Holman in 1896 and Reavis in 1901 worked an actual ouster and broke the continuity of such possession, if any, as plaintiffs may have had. Even if Reavis' original entry in 1901 was a trespass, as the Courts below appear to have considered it, the status of plaintiffs at that time was, as found by the Trial Court, also that of trespassers, so that even upon this view the result would simply be that one trespasser displaced another, and interrupted any adverse possession which the first trespasser might have been in process of acquiring.

The lack of any definite boundaries is also fatal to plaintiffs' claims as based on adverse possession. A claim to a whole mountain-side of mining territory, based upon hap-hazard surface scratchings by various natives, is not a sufficient possession to meet the requirements of the Statute. This among other things differentiates this case from that of Cariño *v.* The Insular Government, decided by this Court on February 23, 1909. There the

lands in question were clearly defined in boundaries, location and extent, and from time immemorial had been surrounded by a substantial enclosure. No adverse claim had ever been made to them until the attempted Government reservation. Moreover, those lands were agricultural, and hence prescriptible even against the Spanish Crown, and they apparently had never been Crown lands. Here the Trial Court expressly found that the properties in question were "Crown lands and as such passed to the Government of the United States" (Rec., fol. 289).

Another important point of difference is that in the Cariño case it was expressly found that the Iggorrote claimant owned the land under and according to the native customs, while here it appears from all the evidence as to the Iggorrote customs of mining, that the Iggorrotes neither assert nor recognize claims of *exclusive* ownership in mining territory.

As Mr. Clyde testified:

> "They never claimed the ownership for any length of time. They would work in that place for one day and may be for one week because they would work in one place a week and the next place they might be working would be a mile from there in another entirely different place" (Rec., fol. 162).

See also testimony of Kelly to the same effect (Rec., fol. 230).

The Cariño decision very properly protects the natives in their ownership of their homes, farms and pastures, upon proof of immemorial *exclusive* possession, without regard to full compliance with all the procedural technicalities of the Spanish law. But here the plaintiffs ask the Court to declare that because a particular family of Iggorrotes, with others, have habitually roamed over a mountain-side, digging little holes in the surface here and there, and taking out a little loose gold, they have acquired

a legal title and exclusive rights to all the stores of mineral wealth in the depths below, within whatever boundaries they may *now* choose to assert. Such a ruling would effectually prevent the development of the mineral resources of the Philippine Islands.

The determination of the Trial Court in this case that on and after July 1, 1902, the title to the mines in question was "held in trust by the United States (and the Government of the Philippine Islands) for the use and benefit of José Fianza and his co-owners, the other plaintiffs in this case" (Rec., fol. 321), is wholly unsupported by anything in the evidence and is not in accordance with the law. If, upon the facts, the plaintiffs were entitled to a patent, they could apply for it and get it, unless some adverse claim was successfully interposed. If any one else applied for a patent before they did, they could then assert an adverse claim, by filing it with the Mining Recorder under Secs. 37 and 39 of the Act, and could prosecute it in the Courts. They have done neither and have thus wholly failed to entitle themselves to invoke the provisions of Sec. 45. That Section merely prescribes certain rules of evidence and procedure; it is not a declaration of trust by the Government either for a class or for any individuals.

POINT IV.

Plaintiffs were not entitled to an injunction against defendant.

As we have already shown under Points II and III, plaintiffs' rights, if any, were of a very uncertain and doubtful character. Their possession had been interrupted in fact, whatever the legal status of the interruption. The boundaries of their claim were vague and

fluctuating, as shown by the loose character of the testimony and the difference between the complaint and the Balpiedad survey. Whatever rights they might have been permitted to acquire by the Act of July 1, 1902, they had not availed themselves of its provisions. They wholly abandoned all claims for damages or accounting. The relief granted by the final judgment of the Trial Court was simply "that the temporary injunction issued in this cause on the 18th day of January, 1904, be and is hereby made perpetual" (Rec., fol. 333).

It was not a proper case for such an intervention of the strong arm of equity. It is familiar and well settled law that an injunction should not be granted in support of doubtful and disputed rights, or where there is an adequate remedy at law. Moreover the plaintiff must succeed, if at all, on the strength of his own right or title, not on the weakness of his adversary's.

See

Lawson *v.* U. S. Mining Co., 207 U. S., 1,
Gwillim *v.* Donellan, 115 U. S., 45.

The general rule is well stated in Tacoma Ry. & Power Co. *v.* Pacific Traction Co., 155 Fed., 259.

> "It is contrary to the principles of equity to grant an injunction to a complainant for the protection of rights which are disputed and the subject of litigation, when there is no threatened irreparable mischief to be prevented."

In the case at bar, the allegation of threatened irreparable injury contained in the bill (Rec., fol. 5) was practically withdrawn by plaintiffs' failure to introduce any evidence of any substantial pecuniary injury whatever.

By plaintiffs' own bill, they were out of possession when the suit was brought. This also defeats their claim for an injunction.

See Lacassagne *v.* Chapuis, 144 U. S., 119, in which the rule was thus stated by Blatchford, *J.* (at p. 124).

> "The plaintiff was out of possession when he instituted this suit; and by the prayer of this bill he attempts to regain possession by means of the injunction asked for. In other words the effort is to restore the plaintiff, by injunction, to rights of which he had been deprived. The function of an injunction is to afford preventive relief, not to redress alleged wrongs which have been committed already. An injunction will not be used to take property out of the possession of one party and put it into that of another. 1 High on Injunctions, 2nd Ed., §355."

See also Whitehead *v.* Shattuck, 138 U. S., 146.

As shown under Point III, plaintiffs had no legal rights of ownership in the mining property in question unless they acquired them under the Act of July 1, 1902, and that Act provided a regular and orderly procedure for their assertion and establishment. There is nothing in the Record to indicate that such procedure is in any way inadequate to protect whatever rights plaintiffs may have, and to that course they should have been, and should now be, remitted.

In addition to proceeding directly under that Act, plaintiffs might also have brought an action for forcible entry and detainer under Sec. 80 of the Philippine Code of Procedure, or an action in the nature of ejectment to determine the title, under such decisions as

> Bago *v.* Garcia, 5 Phil. Rep., 524,
> Bishop of Cebu *v.* Mangaron, 6 Phil. Rep., 286,
> Barlin *v.* Ramirez, 7 Phil. Rep., 41.

If plaintiffs had any title, it was inchoate and incomplete, since they had obtained no patent. This Court has held that a person having such a claim is not entitled to an injunction against an adverse claimant where there is

an adequate remedy available in an action at law to recover possession.

See

Black *v.* Jackson, 177 U. S., 349,
Potts *v.* Hollen, 177 U. S., 365.

In the case at bar, the Trial Court, without notice and without hearing, wrested the possession of the property in dispute from the defendant and gave it to the plaintiffs by the summary process of a preliminary injunction, and then held at the trial, as a fact, that defendant was out of possession, and that his former possession had only been constructive, and accordingly made the injunction permanent.

This, we respectfully submit, was not a proper use of this great engine of equitable jurisdiction. Title and right of possession are legal rights, and should be tried by legal process, and protected by legal remedies. Not until these fail should equity intervene.

The defendant asked no affirmative relief in this case and it is not necessary for its determination to decide what legal rights he acquired by his entry in March, 1901, or his location in October, 1902. The injunction should simply be dissolved and the parties thus restored to their former legal status and left to settle their conflicting claims under the Act of July 1st, 1902, by following the procedure which it prescribes, as the defendant had already begun to do when stopped short by the preliminary injunction.

The suggestion that Reavis was a "claim jumper," and therefore not entitled to consideration (Opinion of Trial Court, Rec., pp. 206, 7; opinion of Willard, J., Rec., p. 220), is baseless. To take up an abandoned Spanish grant, with the knowledge and acquiescence of the supposed former owner, is not "claim-jumping"—it is rather a lawful "re-location." Reavis, having entered peaceably, had a right to protect his possession, keep tres-

passers off, prevent the disturbance of his stakes, and warn off everyone from the danger zone of his blasting operations. He was no oppressor of the natives. Governor Pack, the highest official of the Province, called as a witness for the plaintiffs, testified (Rec., fol. 80): "There have never been any complaints against Mr. Reavis, on the contrary his conduct has been of a very high standard and *he is said to be the friend of all the Iggorrotes.*"

POINT V.

The judgment of the Trial Court should have been reversed for errors in the exclusion of evidence.

Since this was a case in equity, the erroneous admission of improper evidence would be of comparatively little importance, since such evidence could be disregarded by the Court. But the erroneous exclusion of proper evidence stands on a different basis.

As was said by Mr. Justice Harlan, in Buckstaff *v.* Russell, 151 U. S., 626, at p. 637:

> "If the question is in proper form and clearly admits of an answer relevant to the issues and favorable to the party on whose side the witness is called, it will be error to exclude it. Of course, the Court, in its discretion, or on motion, may require the party, in whose behalf the question is put, to state the facts proposed to be proved by the answer. But if that be not done, the rejection of the answer will be deemed error or not, according as the question, upon its face, if proper in form, may or may not clearly admit of an answer favorable to the party in whose behalf it is propounded."

In order not to burden the Court unduly, we shall confine ourselves to pointing out a few of the most serious of these errors of exclusion.

The plaintiff, Fianza, was asked on cross-examination (Rec., fol. 33): "What mines do you claim; that which you claim by this suit, or that which was measured by Vicente Balpiedad?"

This was objected to and excluded. In view of the fact that one of the main defences to the suit was the uncertainty of the boundaries of plaintiffs' claim, this question was clearly material, especially on the cross-examination of the principal plaintiff. Had Fianza answered: "I do not know," a dismissal would have followed. Had he answered: "The property described in the complaint," the decree appealed from could not have been made.

Amey, another plaintiff, was asked on cross-examination (Rec., fol. 67): "Did you see any Iggorrotes working for Juan?" (Referring to the defendant John F. Reavis).

The exclusion of this question on a general objection was error. It was plainly material on the question of the character of defendant's possession, whether actual or constructive. If the objection was to its form, as too indefinite in respect to time and place, this should have been specified. The answer, "Yes," would have proved that defendant's possession was actual.

The Records, or certain portions thereof, of the self-constituted "Antamoc Mining District," organized by the American Miners before the Act of July 1st, 1902, were repeatedly offered in evidence for the defendant after very complete proof of their authenticity (Rec., fols. 155-158, 161, 163, 164). These contained the original location notices of the defendant under his first entry in 1901, and while it may well be that such notices did not, of themselves, create any actual legal rights in him, they were material and important as showing the open, public and peaceable character of the inception of his possession, and as identifying the location of his claims.

Their exclusion was manifest error.

In a case turning largely on an issue of fact, where the evidence is such that the Court of intermediate appeal divides four to three on the question, it is certainly most important that all material evidence offered should be before the Court, and the exclusion of any should be deemed reversible error.

CONCLUSION.

The Decree of the Philippine Supreme Court should be reversed and the cause remitted with directions to dissolve the injunction and dismiss the bill for lack of equity.

Respectfully submitted this 12th day of April, 1909.

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Supreme Court of the United States.

October Term, 1908.

No. 16

Office Supreme Court,
FILED
MAY 1 1909
JAMES H. McKENN

JOHN F. REAVIS,
Appellant,

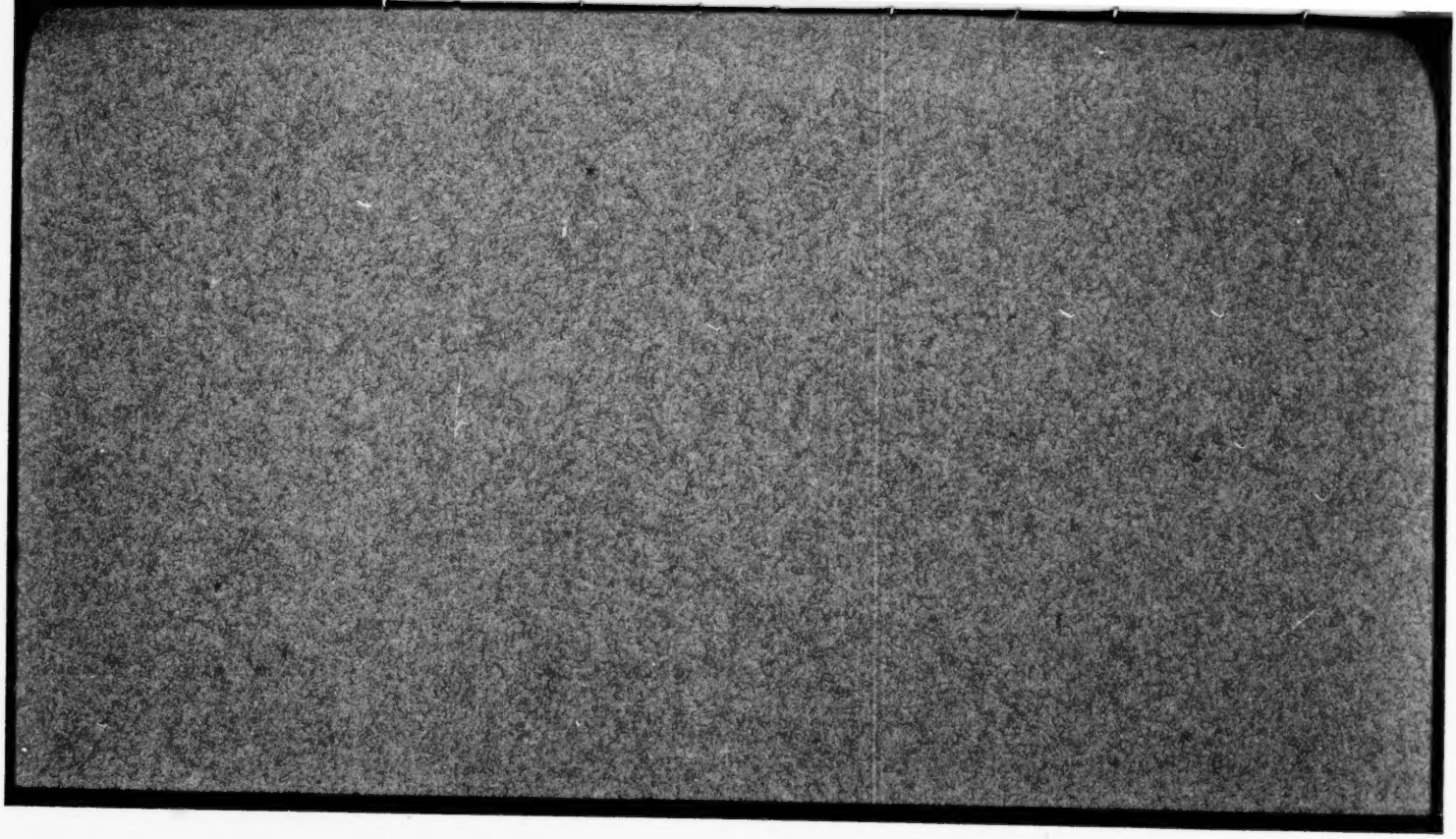
vs.

JOSE FIANZA et al.

Appeal from the Supreme Court of the Philippine Islands.

BRIEF IN REPLY FOR APPELLANT.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908,

No. 183.

JOHN F. REAVIS,
Appellant,

vs.

JOSÉ FIANZA, *et al.*

Appeal from the Supreme Court of the Philippine Islands.

Brief in Reply for Appellant.

The position indicated in the Appellees' Brief and argument simplifies the case and limits the field of discussion. The Appellees rest solely upon the assertion that their alleged possession has given them certain rights under the Act of July 1, 1902. They make no claim under Spanish law or native custom. They claim simply under the Statute, and by the Statute they stand or fall.

To treat this case as involving merely a disputed question of fact, as to which judges might well differ, is to misconceive the entire problem presented on this record.

The real question is this: Shall an Iggorrote family, which has been accustomed for many years to scratch for loose surface gold on the side of a mountain, wherever any gold appeared, be permitted, under Sec. 45 of the Philippine Act, to claim all or any part of that mountain to the exclusion of all others? That these tribesmen

should be treated with as much favor as or even more consideration than Americans or Spaniards, is not only just but has been expressly held by this Court. The fact that they have emerged from savagery and are now advancing from barbarism to civilization (since anthropological classification lacks mathematical precision), should militate in their favor. Is it not something of an exaggeration, however, to refuse to treat as mineral land, open to occupation, the mountain over which this tribe has long roamed and dug? The amounts taken out by Fianza are, to say the least, trifling. To close to the whole world a region of perhaps great value, because some twenty-five to ninety pesos weight of gold has annually been picked from its surface by the Indians, would carry reaction to the limit of the absurd. The great silver mountain Candelaria in Mexico had probably been scratched over for silver, centuries before American capital developed its great resources. It may be said that Fianza claims only 2,000,000 square feet, but that is twice the amount allowed for a "location," as pointed out by Mr. Justice Holmes on the argument, and if he is entitled to that, he or his kinsmen or neighbors are entitled to as much of Antamoc as they may choose to claim. The history of these people shows us that until recent times they lived in a sort of feudal organization. Apparently the natives who found gold brought it to the chief, who gave them something for it. Should the descendants of the chief now own all the mineral lands in the neighborhood? This would be affording to the Iggorrotes, whose conceptions of private property hardly included subterranean rights, a measure of protection which in these days of anti-monopoly legislation seems scarcely American.

There must be a limitation, both of area, and of method of acquisition. The mining law provides both.

We ask the Court to appreciate a peculiar Colonial problem rather than to weigh conflicting claims as to mining boundaries.

The Appellees' Brief (p. 1) expressly admits the substantial accuracy of Appellant's Statement of Facts. The Appellant respectfully submits that upon the facts so stated it is clear that the plaintiffs' alleged possession of the territory or any part thereof was neither continuous nor exclusive, and that the *general* findings of the Trial Court on this subject are contrary to the evidence, as well as inconsistent with the more detailed findings of *specific* facts.

The defendant did not and does not assert that the "adverse claims" of Illera and Holman during the Spanish régime ever ripened into perfect title; he does maintain that they interrupted the alleged continuous adverse possession asserted by the plaintiffs.

The fact that the defendant's location notices gave an erroneous date for the Philippine Act (Appellees' Brief, p. 3)) is immaterial. The notices complied with the Act and the mistake could not have misled any one.

The testimony of Juan Cariño, referred to in the Appellees' Brief (p. 3), is too vague to be conclusive of anything. It shows nothing whatever about location or boundaries and refers simply to "the mines of Antamoc" (Rec., fol. 51).

Appellant's reference to Carrera as a witness for plaintiffs (Appellees' Brief, pp. 3, 4), was an inadvertence due to the inclusion of Carrera's testimony among that of plaintiffs' witnesses. It is immaterial by whom he was called, since there is no suggestion that his testimony was not truthful.

The questions of law to which the Appellees' Brief is devoted may be classified and discussed under the following heads:

I.—The jurisdiction of this Court.

II.—The construction of the Act of July 1st, 1902.

III.—Plaintiffs' standing to demand injunctive relief.

I.

The Jurisdiction of this Court.

This Court's jurisdiction in this case is fully established. The extensive arguments on both sides as to the proper construction of the Act of July 1st, 1902, show this beyond dispute (See Appellant's Brief, pp. 21-25, 30, 31; Appellees' Brief, pp. 8-16). Among other things it must be determined whether §45 of this Act confers any rights whatever, except to apply for a patent and prove title in a particular way, as incidental to such application. This is a basic question, which goes to the root of plaintiffs' case; the parties are diametrically divided upon it, and only this Court can give an authoritative answer. It must also be determined what kind of possession is sufficient to satisfy the requirements of §45; what is the meaning of its provision in regard to the "absence of any adverse claim"; and what are the possible limits in area of a claim under this provision. All these questions must be decided before the questions of fact even arise. If appellant is correct in contending that the provisions of §45 can be availed of only in aid of an application for a patent, there must be

a reversal. Whatever disposition is made of the questions of fact.

The jurisdiction of this Court on the basis of the amount involved is also clear. The Trial Court found that the defendant's claims are substantially identical with the territory claimed by plaintiffs according to the Balpiedad survey. (Rec., p. 172.) The intimation to the contrary by Mr. Justice Willard (Rec., p. 217), was rather *dictum* than decision, since there was a general affirmance. There is sufficient proof by affidavit of the jurisdictional value of defendant's claims, "*the title to and possession of which are involved in the above entitled cause*" (Rec., fols. 452, 454), and slight variances of boundary are immaterial upon this question of value. Whatever may be the ultimate result, defendant's claims are now "in controversy."

The errors in the exclusion of evidence are properly before the Court. The entire record of the trial, containing these rulings, was made a part of the Bill of Exceptions (Rec., fol. 334). Some of these errors were specifically mentioned in the Assignment of Errors (Rec., fol. 449, Asst. 21), and they are fully set forth in Appellant's Brief (p. 9, Spec. 5, Point V, pp. 32, 33). The Court may notice them even if neither assigned nor specified (Rule 21, Subd. 5). This Court has just held that there is a presumption of harm from the exclusion of material evidence, and that the absence of harm must be clearly shown by the record to obviate reversal on this ground.

See Crawford *v.* U. S., 212 U. S., 183, at 203.

II.

The construction of the Act of July 1st, 1902.

The Appellees contend that §45 of the Act of July 1, 1902, operates as a present grant of title to any one who has had any shadow of possession of any unlimited amount of territory for the requisite period, and that application for a patent is a mere form, and hence immaterial and unnecessary. (Brief, pp. 11, 16.) This is contrary to the plain language of the Statute. The words "shall be sufficient to establish a right to a patent" fall far short of meaning "shall be sufficient to vest the possessor with the legal or equitable title for all purposes." *Where rights are claimed under the Statute, as they are in this case,* they should be asserted as the Statute prescribes, as incidental to an application for a patent. Otherwise, the whole Mining Code is superfluous, and mining claims would stand upon the same basis as agricultural lands. The Appellees in effect admit that their procedure has been irregular (Brief, p. 16).

Our contention that plaintiffs' possession was broken in fact is apparently admitted, but it is asserted that this is immaterial. The Appellees contend that the only way to interrupt adverse possession is to file an adverse claim in the Land Office (Appellees' Brief, p. 10), and that in the absence of *such* an adverse claim, the mere assertion of any kind of possession, actual or constructive, is sufficient. This is not the law. Adverse possession of mining rights must meet the same requirements as adverse possession of any other property. It must be actual, physical, continuous and exclusive. It was held by this Court in one of the cases cited by the

Appellees (Belk *v.* Meagher, 104 U. S., at p. 287), that where a claimant relied on adverse possession, his "ultimate right to a patent depended entirely on his keeping himself in and *all others out.*" There is one admission on this subject in Appellees' Brief which should go far towards putting them out of Court. It is apparently not claimed that they had even fully acquired such rights as the Statute might give, but only "that they were *on their way to the acquisition* of such when they encountered interference by the action of the defendant" (Brief, p. 13). Upon this basis they had nothing for a Court of Equity to protect. An adverse holder has no title until the requisite period is complete. Then, and not until then, has he any standing to apply for a patent and prove the necessary facts, and if no "adverse claim" is *then* filed, he is entitled to such a grant.

But a "location" can only be made for a territory not exceeding 1,000 feet by 1,000 feet (Act of July 1, 1902, §22, 32 U. S., Stat., p. 697); and at best, adverse possession is a mere substitute for statutory "location," as a basis for an *application* for a patent. The same limitation of area should therefore apply. Yet here the Courts below have awarded to claimants more than twice the greatest area allowed for a statutory "location," just as it is more than twice what they themselves claimed in the complaint,—and this, with no application for a patent.

III.

Plaintiffs' standing to demand injunctive relief.

It is admitted that this suit is not in aid of an application for a patent. The complaint asserts ownership by the plaintiffs and dispossession by the defendant, and seeks at once to regain and protect possession by means of an injunction. As we have shown in our former Brief (pp. 28-31), this is not permissible. The authorities cited by Appellees are not in point. They relate mainly to situations in which the right to a jury trial was involved, or where the jurisdiction of a Court of Equity to determine a given case at all was challenged. In the Philippine Islands such questions do not arise. There is no jury trial, and there are no separate Courts of Equity. Here the Court of First Instance, upon the case made by the pleadings, had jurisdiction to try the cause—at all events as a claim for damages—hear the evidence, and give such judgment as should be proper. Our position is, that upon the facts proved it was contrary to the established rules of Equity jurisprudence to grant an injunction and that the decree was therefore erroneous. The Philippine Code of Procedure, Sec. 171, provides merely that where upon the trial "it shall appear that the plaintiff is *entitled* to an injunction," the Court shall grant it. As there is no provision in regard to what shall be considered sufficient to entitle a plaintiff to such relief, the general rules of Equity on the subject must be deemed to be adopted by implication. Injunction was apparently unknown to the jurisprudence of the Islands before the cession.

The defendant did not ask for any affirmative relief, as

stated by Appellees (Brief, p. 17), nor did he by his answer seek an adjudication establishing the validity of his "locations,"—he merely asked that the complaint be dismissed. This would have left the parties in precisely the same position as would a judgment that neither party had shown sufficient title, rendered in a suit incidental to a patent application, as discussed in Appellees' Brief, p. 23.

The case cited by Appellees (Brief, p. 25, Glacier Mining Co. *v.* Willis, 127 U. S., 471), to support their assertion that there was a sufficient identification and description of the mines which they claimed, turned merely on a question of pleading and had nothing to do with the effect of such glaring contradictions as those between the claim of the complaint, and the Balpiedad survey. When the area claimed is more than doubled, it presents no mere question of variance of boundaries, but shows rather that the claimants have *nothing* susceptible of legal proof or adjudication.

The whole discussion as to the boundaries, the admission in the complaint that they could not be defined, the hopeless contradiction between the Wagner and Balpiedad surveys, all show that plaintiffs never had any property right in any mine. In fact, no real mine existed at Antamoc at all. This appears quite as clearly from the plaintiffs' witnesses as from defendant's. All that plaintiffs really had was a custom of gathering gold wherever they could find it on the mountain generally.

Summary.

I.—This Court's jurisdiction is fully established.

II.—The Appellees' construction of the Act of July 1st, 1902, is incorrect.

III.—The plaintiffs had no title to the property in dispute and no sufficient possession to satisfy the Statute.

IV.—The plaintiffs are not entitled to invoke the provisions of the Statute except in aid of an application for a patent, which they have not done.

V.—Upon the pleadings and proof, plaintiffs were not entitled to an injunction.

CONCLUSION.

The decree appealed from should be reversed and the complaint dismissed.

Respectfully submitted this 30th day of April, 1909.

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Supreme Court, U. S.
FILED
APR 22 1902
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 16

JOHN F. REAVES, APPELLANT,

vs.

JOSE ZIANZA ET AL.

Appeal from the Supreme Court, Philippine Islands.

BRIEF FOR THE APPELLEES.

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THE LAW REPORTER PRINTING COMPANY, WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1908.

No. 183.

JOHN F. REAVIS, APPELLANT,

vs.

JOSE FIANZA ET AL.

Appeal from the Supreme Court, Philippine Islands.

BRIEF FOR THE APPELLEES.

I.

Statement of the Case.

The statement of the case in the brief for the appellant so sufficiently acquaints the court with its character as to make any extended restatement thereof unnecessary, and it is, in general, from the appellant's viewpoint as to the facts recited, so accurate as to call for little, if any amendment, especially in view of the manner of treatment of the case hereinafter, which, it will be seen, would seem to render unnecessary any greatly detailed attention to many of the matters of fact apparently deemed of importance by appellant's counsel.

Some of the statements in the brief should, however, not be passed over without notice—as the following:

Thus, the statement (p. 4), that the finding of the

trial court that the plaintiffs and their predecessors had had for many years sole and exclusive possession of the mines is wholly unsupported by the evidence, and that on the contrary it affirmatively appears by the plaintiffs' own witnesses that there were excavations all over the mountain which were made by many Igorrotes, is misleading, in this: that the statement is apparently intended to be that "the excavations all over the mountain" which were "made by many Igorrotes" were in the mines in controversy, whereas, as is pointed out in the majority opinion of the court below (Rec., p. 221, f. 349), the testimony on this point is not seen to refer to the particular tract of land in controversy, and for aught that appears applies as well to the mountain in general, the very alleged indefiniteness of description of which is one of the points of reliance of the defendant.

Again: The statement (p. 5), that "in addition to the apparent right or privilege of any Igorrote to work in the territory, there were two definite and fully proved adverse claims made during the Spanish regime, which broke the continuity of such possession as Fianza or his predecessors may have had" is directly opposed to the thirteenth finding of the trial court (Rec., p. 171, f. 278); and if meant to assert that the alleged adverse claims were of the sort asserted by the plaintiffs, the statement is wholly without support in the testimony; and if meant to assert that such claims were in accordance with prevailing law, they are distinctly found not to have been so made; wherefore such claims can not, under any view of section 45 of the act of July 1, 1902, be said to be such adverse claims as that section contemplates.

Again: (P. 8) it is stated in the brief that "in October, 1902, *doubtless immediately after information of the act of July 1, 1902, reached Benguet*, Reavis complied with *its* requirements and filed regular location notices for

his three claims;" whereas, the fact is that in each of his locations (Rec., p. 165, f. 272; Rec., p. 167, f. 274; Rec., p. 169, f. 276), the recital is of compliance with "local customs, regulations, etc., and with the laws of the United States (see note with diagram), and with the laws enacted by Congress, *March, 1902*, entitled an act to provide temporarily for conditions in the Philippine Islands." The "laws of the United States" referred to in connection with the "note with diagram" manifestly are the laws under which the pretended organization of the "Antamok mining district" was attempted (see diagram opposite Rec., p. 148, marked f. 247); there was an actual prohibition by Congress of any disposition of mining rights in public lands in the Philippines from March 2, 1901, to July 1, 1902 (Rec., p. 181, f. 291–2; Rec., p. 184, f. 296), and there is not any act of Congress of March, 1902 (Rec., p. 187, f. 300), in the premises.

Again: The reason for the statement of the brief (p. 9), that the map or plan of the Balpiedad survey seems to have been treated as if in evidence, though the record fails to show its offer and admission, is not apparent, seeing that Johnson, J., in his dissenting opinion, so earnestly relied upon for the appellant, distinctly states that the map or plan (Rec., p. 226, f. 359), was "presented in evidence by the plaintiff," and it is embodied in that opinion (*ad loc. cit.*).

Again: It is said (p. 12), that "the only identification of the mines claimed to have belonged to Dominguez and Toctoc is that they were 'in Antamoc,' where there were numerous mines," whereas the witness Juan Carino distinctly testified (Rec., p. 33, f. 52), that "the mines of his father Dominguez are the same mines of Fianza," the same mines that belonged to Dominguez when witness was a little boy.

Again: (P. 15), Carrera, who is stated to have "testified that he knew Dominguez and that Dominguez and

his family made no objection to his locating his claims," is described as a witness for plaintiff, whereas Carrera was a witness for the defendant, examined out of turn "by consent of all parties and the court (Rec., p. 26, f. 41).

II.

The Question of Jurisdiction.

The case is claimed to be properly in this court upon the double ground that the act of Congress of July 1, 1902, "is involved," and that the matter in controversy exceeds in value the sum of $25,000 (Rec., pp. 226–7, f. 442).

1. It is, of course, intended by the expression "is involved" to assert that the statute mentioned is so involved, within the meaning of the provision allowing appeals from the Supreme Court of the Philippine Islands to this court, as to give this court jurisdiction to entertain the appeal.

The provision in question is as follows:

> "Sec. 10. That the Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify, or affirm the final judgments and decrees of the Supreme Court of the Philippine Islands in all actions, cases, causes, and proceedings now pending therein or hereafter determined thereby in which the constitution or any statute, treaty, title, right, or privilege of the United States is involved, or in causes in which the value in controversy exceeds twenty-five thousand dollars, or in which the title or possession of real estate exceeding in value the sum of twenty-five thousand dollars, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; and such final judgments or decrees may and can be reviewed, revised, reversed, modified, or affirmed by said Supreme Court of the United States on appeal or writ

> of error by the party aggrieved, in the same manner, under the same regulations, and by the same procedure, as far as applicable, as the final judgments and decrees of the circuit courts of the United States" (act of July 1, 1902, 32 Stats. at L., 695).

The simplest consideration of the matter shows that the contention that this court has jurisdiction because of the Act of July 1, 1902, is wholly without foundation. It is true that both the trial court and the Supreme Court of the Philippines held that the rights of the plaintiffs depended upon section 45 of the act in question (Rec., pp. 203–4, f. 322; Rec., p. 224, f. 354). That section is as follows:

> "That where such person or association, they and their grantors have held and worked their claims for a period prescribed by the statute of limitations of the Philippine Islands, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this act, in the absence of any adverse claim; but nothing in this act shall be deemed to impair any lien which may have attached in any way whatever prior to the issuance of a patent."

The case was made and tried upon the double contention in fact that the plaintiffs and their ancestors in title had held and worked the claims for the prescribed period, and in the absence of any adverse claim. The affirmative of this contention was held by the plaintiffs, and the negative by the defendant, but the sole controversy was over the facts, first, whether the plaintiffs and their ancestors so held and worked their claims; and, second, whether there was any adverse claim affecting that of the plaintiffs. The testimony was directed exclusively by the plaintiffs to the establishment of their contentions in respect of these matters of fact, and by the defendant to the prevention of such establishment, and all

of the opinions in the case, both of the trial court and of the Supreme Court of the Philippines, dealt with the case accordingly. As is above pointed out, the trial court and the majority of the Supreme Court in terms were specific to the point; Tracey, J., of the Supreme Court, rested his dissent upon the view that the testimony failed to establish a sufficient holding and working of the property in controversy to constitute the required possession, and "for this reason only" he dissented, (Rec. p., 226, f. 359); and the dissent of Johnson, J., likewise rests exclusively upon his view of the facts, (Rec p., 263, f. 434); and Carson, J., concurred with Johnson, J. (Brief for Appellants, p. 3).

If the right of possession does not involve any question under the law, but involves only a mere matter of fact, no Federal question is presented.

Shoshone Min. Co. *vs.* Rutter, 177 U. S., 505, 508.

Very clearly, therefore, the statute in question "is involved" in no such sense as gives this court jurisdiction of the case. To hold otherwise would be to hold, in effect, that any case arising under a statute of the United States is reviewable by this court, which would be as much as to say that every case in the Philippine courts is so reviewable.

2. Nor is there any greater substance in the other supposed ground of jurisdiction, namely, the amount in controversy.

This ground depends exclusively upon the evidence of one Clarke and one Eye, respectively president and manager of the Benguet Consolidated Mining Company, (Rec., pp. 272–3, f. 452–4). Each of the affiants states "that he knows the mining claims of the defendant, J. F. Reavis, known as the 'Otek,' 'Clayton,' and 'Texas,' situated at Antamok, Benguet Province, the title to and

possession of which are involved in the above entitled cause," and "the value of said mining claims exceeds the sum of twenty-five thousand (25,000) dollars United States currency."

Apart from the fact that what is involved in the cause is not the mining claims of Reavis but the property claimed by the plaintiffs, which property it is industriously iterated and reiterated by the defendant is not only not identifiable with his alleged properties but not identifiable at all, the fact abundantly appearing throughout the record (*e. g.*, at Rec., pp. 217–18, f. 343), is that the Otek claim is outside of the land claimed by the plaintiffs, and that not all of the defendant's other two locations are clearly within such land. This establishes beyond all room for doubt that the amount in controversy is not shown to be the necessary jurisdictional amount, and accordingly that the ground of jurisdiction in immediate question does not exist.

III.

The Question of Plaintiffs' Title.

Much stress is laid upon the contention that the plaintiffs had no title to the mines in controversy at the time of the cession of the Philippine Islands to the United States, and have not acquired any since that time. The keynote of this contention is that—

> "it is familiar and elementary law, both under our system and that of Spain, that mines of precious metal constitute a peculiar species of property, especially subject to the control of the government, and can be acquired in private ownership only by compliance with such regulations as the government may prescribe,"

(Brief for Appellant, p. 20); and firm, though it is respectfully suggested mistaken, reliance is had upon the principles recognized and enunciated in such cases as those of the United States *vs.* Castillero, 2 Black, 1, and Strother *vs.* Lucas, 12 Pet., 410.

Of such cases as these it may suffice to say that, as respects the case at bar, both they and the principles involved in their decision are obsolete. The former case holds, what is not here denied, and indeed what is not here in any sense in controversy, that as between sovereign on the one hand, and subject or citizen on the other, under the law as it obtained at the time of the decision the formal proceedings prescribed by the sovereign, leading up to and ending in registry, were essential to title in the subject or citizen; and the latter case holds, which also is not questioned, that upon the taking over of territory by a new sovereign the laws of the former sovereignty continue in force until changed by the new sovereign. But these cases and the learning which plays about them are of no practical interest in the premises, seeing that in 1872 (17 Stats. at L., p. 91), the Congress of the United States, speaking for that sovereignty, enacted into law what, though foreshadowed (14 Stats. at L., 251; 16 Id., 217), for practical purposes may properly be characterized as a new principle dealing with the case of the subject or citizen of a prior sovereignty who had not taken the necessary steps to procure, or to entitle him to, a formal title to mining property, but whose situation in relation to such property was deemed to entitle him and his rights to recognition as though he had taken all the necessary preliminary steps leading up to the acquirement of a formal title by patent.

The provisions of this enactment passed into the Revised Statutes of the United States, speaking as of the date December 1, 1873, and are now to be found in section 2332 of the Revision, in the following words:

> "Where such person or association, they and their grantors, have held and worked their claims for the period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated,

> evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent."

It is seen at a glance that this section and section 45 of the act of July 1, 1902, are, with very slight changes, identical, *mutatis mutandis*.

The act of 1872 (R. S., 2332), was intended to deal and dealt principally with the large territory acquired by the the United States from Mexico, which by the time of the passage of the act had become subdivided into various States and Territories, and the scheme of the act, as above indicated, was clear; namely, to recognize in the inhabitants of those States and Territories, independently of compliance with the rigid, if not arbitrary, requirements of the laws of the former sovereignty and local laws and customs inherited therefrom or enacted and adopted in analogy to the institutions thereof, rights equivalent to those of location and possession, and of themselves conferring the right to a patent.

When the United States took over the Philippines it was not unnatural that the same principle should be extended to the inhabitants of the newly acquired territory, but out of abundant caution, and with a deliberation due to the magnitude and importance of the interests involved, the United States did not immediately extend the principle, but as above shown, at first laid a prohibition upon the disposition of any mining rights until in the end it definitely resolved to apply to the Philippines the principle already applied to the States and Territories carved out of the acquisitions from Mexico. The

act of July 1, 1902, resulted, and on every principle that act is to be read, construed and applied as was the earlier act to the States and Territories mentioned.

And fortunately what this means is too clear for discussion at this day.

> "The object of this section was to permit a party applying for patent to make a prima facie case before the Land Office by proving that the claim upon which the application for patent was made had been in possession of himself and grantors for a period equal to the statute of limitations of the jurisdiction in which the claim was situated, provided no adverse claim was interposed. In other words, proof of possession for the statutory period, in the absence of any adverse claim, was to be taken by the Land Department as equivalent to an establishment in detail of all the facts necessary to constitute a valid location."
>
> Cleary *vs.* Skiffich (1901), 28 Colo., 362, 364.

The section provides an additional mode of acquisition of mineral land from the Government.

> Anthony *vs.* Jillson (1890), 83 Cal., 296, 302.

Adverse claim means "a claim filed in the United States Land Office, opposing an application for patent to mining premises, made by another person. The claimant applies for patent. The adverse claimant opposes him. . . . The Land Office adverse claim."

> McCowan *vs.* Maclay (1895), 16 Mont., 234, 239.
> Altoona, etc., Co. *vs.* Integral, etc., Co. (1896), 114 Cal., 100, 105.

Where possession has continued for the prescribed

period before the adverse right exists, it is equivalent to a location under the laws of Congress.

Altoona, etc., Co. *vs.* Integral, etc., Co., *ubi supra.*

420 Min. Co. *vs.* Bullion Min. Co. (1876), 3 Sawy., 634, 657–8.

Harris *vs.* Equator, etc., Co. (1881), 8 Fed. Rep., 863.

Belk *vs.* Meagher (1881), 104 U. S., 279, 287.

Lavignino *vs.* Uhlig (1903), 26 Utah, 125.

Upon completion of a location, and until patent issues, the Government holds the title in trust for the locator.

Noyes *vs.* Mantel (1888), 127 U. S., 348, 351.

A title so acquired will be quieted on a bill in equity even against the holder of a correct paper title.

420 Min. Co. *vs.* Bullion Min. Co., *ubi supra.*

And that in dealing with the Philippines, the United States did not mean to treat its inhabitants as less entitled to the just and beneficent principle adopted towards the inhabitants of our former Mexican territory, but rather intended to put them on an even more favored footing, is not open to discussion. In the case of Carino *vs.* Insular Government of the Philippine Islands, No. 72 of this term, decided by this court February 23, 1909, the following utterance, equally conclusive and impressive, fell from this court:

> "The Province of Benguet was inhabited by a tribe that the Solicitor General, in his argument, characterized as a savage tribe that never was brought under the civil or military government of the Spanish Crown. It seems probable, if not certain, that the Spanish officials would not have granted to any one in that province the registration to which formerly the plaintiff was entitled by the Spanish laws, and which would have made his title beyond question good. Whatever may have been the technical position of Spain, it does

not follow that, in the view of the United States, he had lost all rights and was a mere trespasser when the present Government seized his land. The argument to that effect seems to amount to a denial of native titles throughout an important part of the Island of Luzon, at least, for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce.

"The acquisition of the Philippines was not like the settlement of the white race in the United States. Whatever consideration may have been shown to the North American Indians, the dominant purpose of the whites in America was to occupy the land. It is obvious that, however stated, the reason for our taking over the Philippines was different. No one, we suppose, would deny that, so far as consistent with paramount necessities, our first object in the internal administration of the islands is to do justice to the natives, not to exploit their country for private gain. By the organic act of July 1, 1902, c. 1369, §12, 32 Stat., 691, all the property and rights acquired there by the United States are to be administered 'for the benefit of the inhabitants thereof.' It is reasonable to suppose that the attitude thus assumed by the United States with regard to what was unquestionably its own is also its attitude in deciding what it will claim for its own. The same statute made a bill of rights embodying the safeguards of the Constitution, and, like the Constitution, extends those safeguards to all. It provides that 'no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.' §5. In the light of the declaration that we have quoted from §12, it is hard to believe that the United States was ready to declare in the next breath that 'any person' did not embrace the inhabitants of Benguet, or that it meant by 'property' only that which had become such by ceremonies of which presumably a large part of the

> inhabitants never had heard, and that it proposed to treat as public land what they, by native custom and by long association, one of the profoundest factors in human thought, regarded as their own."

And the fact that the lands under consideration in the Carino case were not, while those under consideration in the case at bar are, mining lands, is wholly beside the question: the point is, that in acquiring the Philippines the first object of the United States was "not to exploit their territory for private gain," but "to do justice to the natives;" and very clearly the act of July 1, 1902, passed only after the deliberation above indicated, was plainly enacted for the inhabitants of the islands, who were the only possible beneficiaries of that act, and respecting whom Congress in preparing itself for the enactment must have learned of their occupation of mining lands, and also of the fact that as to such lands the Spanish officials would not have granted to any one in the province of Benguet a title to such lands, just as this court has said in the Carino case that those officials would probably not have granted to any one in that province registration for even agricultural lands.

And in view of what has been said, the suggestion that the plaintiffs have not acquired any title to the mines in controversy since our acquisition of the Philippines falls out of consideration: the facts being that it is not contended that the plaintiffs ever undertook to acquire formal title to the mines during the Spanish occupation; that almost immediately upon our occupation they were prohibited by law from acquiring such title; that they were on their way to the acquisition of such when they encountered interference by the action of the defendant; and that the object of this case was and is to free themselves of such interference, the suggestion becomes negligible.

IV.

Plaintiffs' Right to Maintain this Action.

It is contended with seeming confidence that the plaintiffs have mistaken their forum, and that they have no right to the remedy sought by them in this action; and the contention is argued for the appellant in evident seriousness and much earnestness.

It may be conceded for the sake of the argument that the contention would not be without apparent force if the case were one between ordinary litigants. But it is not such a case, and it is confidently submitted that the earnest argument for the appellant is quite beside the case which is presented by the record.

As above indicated, the "adverse claim" contemplated by the statute in question is a "Land Office adverse claim," and such only. The opinions of the courts in the cases cited are of themselves clear to this point; but, even if that were not so, the fact is that the decisions to that effect long antedate the act of July 1, 1902, and, being decisions made with reference to section 2332 of the Revised Statutes, after which section 45 of the act of 1902 is patterned, and which section is, as has been shown, a mere adaptation to the Philippine Islands of that section of the Revision, upon a most familiar principle the enactment of the later law, for a new jurisdiction is conclusively presumed to have been with the adjudications of the earlier law in the mind of the law-making power, and adopted by it, especially as that power was the same in both cases. It is, accordingly, assumed as unnecessary for further discussion that, in the Philippines Act, the expression "adverse claim" has the meaning here imputed to it.

Section 2326 of the Revised Statutes, which is part of the same act from which section 2332 was taken, provides the course to be pursued in case of an adverse

claim; namely, that, upon the filing of the claim, all proceedings, except the publication of notice and making and filing of the affidavit thereto, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived, and that it shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of the adverse claim. Prior to the year 1881, the adverse claimant, being the actor in such proceedings, was required to recover on the strength of his own title, regardless of the weakness of that of his adversary (Seymour *vs.* Fisher, 16 Colo., 195), but the act of March 3, 1881 (21 Stat. at L., 505), changed the law so as to provide that, if, in any action brought pursuant to the section, title to the ground in controversy should not be established by either party, the jury should so find and judgment should be entered according to the verdict. And such is now the law in the United States; and both parties in adverse proceedings are regarded as actors, and a defendant can not rely upon the weakness of the plaintiff's title, as in ordinary ejectment cases, but, in order to recover, must show such compliance with the requirements of law as would entitle him to a patent from the United States.

Thomas *vs.* Chisolm, 13 Colo., 107.

Section 39 of the act of July 1, 1902, the Philippines Act (32 Stats. at L., 701), is, *mutatis mutandis*, an exact reproduction of section 2326 of the Revised Statutes, as amended by the act of 1881; it being, of course, provided that the determination of the question of title to the ground in controversy shall be by the judgment of the court, instead of by the verdict of a jury.

Accordingly, had the plaintiffs in the case at bar, instead of filing their bill in equity, instituted a proceeding before the proper tribunal to establish their right to a patent on the grounds specified in section 45 of the act of July 1, 1902, and the defendant had adversed the claim of the plaintiffs, all proceedings before such tribunal would, *ipso facto*, have been stayed until the decision of the matter in controversy by a court of competent jurisdiction, in a suit to be commenced by the defendant within thirty days after filing his claim and prosecuted by him with reasonable diligence to final judgment. And the failure of the defendant to institute such proceedings would have waived his claim.

On the other hand, after the defendant had filed his claims, had the plaintiffs then asserted before the land tribunal their right to a patent, they, in turn, would have been in the attitude of adverse claimants, and would, thereupon, clearly have had the right to transfer the controversy to the court.

As the case now before the court stands, however, the plaintiffs, instead of going through the mere form of applying for a patent upon the ground that they had complied with the requirements of section 45 of the act of July 1, 1902, elected directly to institute proceedings in equity, setting up the grounds of their claims to the property in controversy and praying that the defendant be restrained from interference with the same. It may be admitted that, had the defendant so elected, he might have raised the question of the propriety of this proceeding by a demurrer to the plaintiffs' bill, or by taking apt objection thereto in his answer, but, instead of so doing, he answered the bill without taking objection of any kind soever thereto, and without questioning the jurisdiction of the court; and industriously converted his answer into a petition or cross-bill for affirmative defense, in which petition or

cross-bill also he was silent as to the propriety of the plaintiffs' proceeding, or as to any question or doubt respecting the jurisdiction of the court to which the controversy had been transferred.

Upon most familiar principles, the defendant, by his action in the premises in making answer as he did and filing his petition or cross-complaint asking for affirmative relief as he did, closed the door upon any question as to the propriety of the proceedings themselves, or the jurisdiction to determine the same of the tribunal in which they were instituted. Moreover, the defendant, equally with the plaintiffs, went through the course of taking testimony, preparing the case for hearing, and submitting it to the court for determination as a case pending in and before a court competent and adequate to adjudge the controversy.

The principles involved are elementary.

> "Objections to proceedings in equity, other than an entire absence of equitable cognizance, must be seasonably interposed, or they are waived. Sometimes the rule is stated that the existence of an adequate remedy at law is waived by submitting to the jurisdiction, or by not seasonably raising the objection. In other cases, it is said that the objection is waived, if not seasonably interposed, where it is competent for a court of equity to grant the relief sought, and it has jurisdiction of the subject-matter. The former statement would cover every jurisdictional defect, unless construed, as it in fact is, to mean that, in cases within the general domain of equity, the objection that complainant in the particular matter has an adequate remedy at law may be waived. Both statements with their respective variants mean no more than that, where a case is presented within the general field of equity jurisprudence, any feature which might lead the court to decline jurisdiction, or to relegate the party to law in the

particular case, must be seasonably presented, or the party will be deemed to have submitted to an equitable adjudication. A defendant submits to the jurisdiction by seeking affirmative equitable relief."

16 Cyc. of Law, 117.

"Unless the matter is wholly beyond the domain of equitable cognizance, no objection to the jurisdiction of equity can be made for the first time on appeal. Nor can such an objection be made for the first time after hearing or in a code State after trial. It is equally well settled that the objection comes too late, if made for the first time at the hearing or trial, or where the party first presents it after the testimony has been taken or a large portion thereof."

Id., 129.

"The appropriate method of objecting on the ground that plaintiff's remedy is at law, is, where the bill discloses the defect, by demurrer on that ground. Where the defect is not apparent from the bill, it should be presented by plea. Accordingly it is said that an answer to the merits submits defendant to the jurisdiction, but more frequently that an answer to the merits, without objection to the jurisdiction, waives such objection, and, in some cases, it is expressly held that the objection may be preserved by specially presenting it in the answer. Under the codes pleas are not recognized, and, while it would seem that the only questions presented relate to methods of trial, and the nature of the relief to be given, it is, nevertheless, held that objections to the proceedings, being in equitable form, if not appearing on the face of the complaint and availed of by demurrer, may and must be taken advantage of by answer."

Id., 131.

It would needlessly expand this brief even to cite the many cases cited by the authority quoted in support

of the foregoing propositions, but the court is referred to those cases in the confidence that they support the text in its extent, as to each of the propositions so clearly and directly laid down.

In a case strikingly like the present, this court has spoken most aptly to the point under immediate consideration. In that case, the plaintiff brought suit in a district court of Utah against the defendants, alleging title to a mining claim; averring the facts entitling him to a decree founded upon such title; alleging application by the defendants for a patent to certain mining claims surveyed so as to conflict with plaintiff's claim; and praying judgment and relief against the defendants, to the effect that the plaintiff was entitled to the area in conflict, that his title thereto be quieted, that the defendants were without title to, or right of possession of, such area, that the defendants be restrained from entering upon, or mining in, the said area, and from, in any way, interfering with the possession thereof, and for general relief. The defendants answered, denying the material allegations of the complaint; and further affirmatively setting up the facts of their location, claimed a valid location, and prayed that they be adjudged owners and entitled to possession of the conflict area, and for general relief.

The case was tried and determined as one in equity, and, the question of the propriety of the proceedings being raised, the court said:

> "We are of opinion that it was competent for the district court to grant the relief sought, and that it had jurisdiction of the subject-matter. Plaintiff, having voluntarily invoked the equity jurisdiction of the court, was not in a position to urge, on appeal, that his complaint should have been dismissed because of adequacy of remedy at law. Even a defendant, who answers and submits

> to the jurisdiction of the court, and enters into his defense at large, is precluded from raising such an objection on appeal for the first time. (Citing cases.) Nor did the Supreme Court of Utah err in overruling the contention that affirmative relief was improperly awarded defendants because they had filed no cross-complaint. Such relief was sought by the answer, which was treated by the parties and proceeded on by the court as a cross-bill. The objection came too late in the appellate tribunal."
>
> Perego *vs.* Dodge, 163 U. S., 160, 164.

Further, in the course of its opinion, the court said:

> "Even if the action should have been an action at law, still the court had jurisdiction, and a defective exercise of its power would only amount to an irregularity capable of being waived by the parties and susceptible of correction as any other mere errors are corrected. . . . We think that where the adverse claimant chooses to proceed by bill to quiet title, and, as between him and the applicant for the patent, neither is found entitled to relief, the court can render a decree to that effect, just as it would render a judgment on a verdict if the action were at law. If Congress had intended to provide that litigation of this sort must be at law, or must invariably be tried by a jury, it would have said so. There is nothing to indicate the intention thus to circumscribe resort to the accustomed modes of procedure, or to prevent the parties from submitting the determination of their controversies to the court."
>
> Id. 165, 168.

It is particularly to be noted that, in the case cited, although section 2326 provides that the proceedings in court shall be instituted by the adverse claimant, the proceedings were in fact instituted by the locator,

whose claim was adversed, a situation exactly like that in the case at bar. And the fact that a section of the Utah Civil Code provided that an action might be brought by any person against another who claimed an estate or interest in real property adverse to him, for the purpose of determining such adverse claim (Id., 164) is unimportant, seeing that that section of the Utah Code amounts only to a provision for proceedings to quiet title, proceedings which, beyond all doubt, are within the jurisdiction of the courts of the Philippines. And it is further to be noted that, in the Perego case, the plaintiff does not appear to have been before the Land Office, but to have relied upon the facts set up in his bill as entitling him to a decree, as distinguished from a patent.

As above stated, if the plaintiffs herein had so elected they might have filed an adverse claim after the filing of the claims of the defendant, and in such case the plaintiffs would have been adverse claimants within the contemplation of the statute.

Shafer *vs.* Constans, 3 Mont., 369.

And in such case, having filed their adverse claim, they might have instituted proceedings in the proper court against the defendant. Conceding, for the purposes of the argument, that the plaintiffs omitted the formal step of filing an adverse claim, the fact remains that their attitude in the premises may properly be considered to be that of adverse claimants, and in such a situation their suit would have been properly brought. Regard being had to this consideration, the case resolves itself in fact into this: that they went into court asserting a claim adverse to that of the defendant in respect of the property in controversy.

The form of action in which an adverse claim should be asserted is said not generally to fall strictly within any of the rules of any common law action or equity proceeding, and whether the claimants elect either proceeding seems not to be important. But it seems, beyond doubt, that an action either in form or in nature one to remove a cloud upon title is proper in any jurisdiction in which such an action is maintainable, and in such case there seems to be no difference whether the possession relied upon by the claimant instituting the proceeding is actual or only constructive, arising from a valid location or its equivalent, as, at the least, is the case of the plaintiffs under the statute relied on.

20 Encyc. Law, 2 ed., 760, and cases cited.

This being so, and the defendant as above shown having by his course in the proceeding waived objection to the jurisdiction, and having in effect submitted his claims to equitable jurisdiction, any discussion as to whether he might have forced the plaintiffs into a different forum becomes purely academic; and the result is that both parties, plaintiffs and defendant, stand before the court for determination of the controversy between them in the light of their conflicting claims, submitted to a forum of their mutual selection.

V.

The Defendant's Want of Title.

In view of what has already been said, and assuming that the parties are before the court as though they were respective adverse claimants to the land in controversy, it is evident that there is no force in the contention that the defendant is entitled to judgment in his favor unless the plaintiffs show a better title than his.

The act of Congress of March 3, 1881, establishes the proposition that as between two conflicting claimants, one may not prevail against the other actor in the proceedings merely because of the failure of such other to show a better title, it being the requirement of the law that the court shall find, if such be the fact, the failure of either party to show a sufficient title. Accordingly, if the plaintiffs be deemed the actors in this proceeding the mere fact of their failure to show a sufficient title would not of itself entitle the defendant to a judgment that his title is sufficient.

This leaves entirely open the question whether the defendant has established such a right as entitles him to prevail in the proceeding, and accordingly the infirmities in the defendant's title, pointed out by the trial court and abundantly justified by the evidence, leave him without right to claim affirmative relief, assuming the case to be one in which such relief might be granted. The trial court (Rec., p. 158, f. 263, et seq.; Rec., p. 184, f. 184, et seq.) clearly shows in its opinion, which is supported by the testimony, that, apart from the claims of the plaintiffs, the defendant has established no right to the property in controversy, and it is not deemed necessary to repeat in the brief the arguments and considerations leading the trial court to this clearly justified conclusion. It remains, therefore, that on the assumption on which the case is presented, namely, that the two rival claimants, plaintiffs and defendant, are in a forum of their own choosing, and by their election vested with authority to determine the controversy in the premises, the defendant is wholly without right to claim an adjudication in his favor; and that the plaintiffs, being, as hereinafter considered, sufficiently in possession to justify them in asserting such possession against any adverse claimant, the action of the courts below in their favor is beyond successful impeachment.

If, as the fact is, this case is to be treated as though the parties had been transferred from the Land Office to this tribunal, and are here asserting their rights against one another, and the plaintiffs are in any sort of possession, and the defendant makes no successful showing in his own behalf, the situation of the plaintiffs ought not to be disturbed.

VI.

Sufficiency of the Possession of the Plaintiffs and of Description of Their Claim.

In view of the plaintiffs' rights in the premises as above indicated, the character and extent of their possession of the lands in controversy become of comparatively slight importance. It is plain that the acts of mining on the part of the plaintiffs have been as continuous as the nature of the business and the customs of the country permitted, and this meets all requirements.

Stephenson *vs.* Wilson, 37 Wis., 482.
2 Lind. on Mines, sec., 688.

And it is equally plain that the possession of the plaintiffs was such as to permit them to do acts of mining of which the methods, as aptly stated by the trial court, although crude, were yet such as were practised and customary among their people, and "produced gold" (Rec., p. 162, f. 268). Accordingly, it is not open to discussion that the plaintiffs had at the institution of their suit such a footing in law as justified them in saying that they had that in respect of which they might assert their rights against any one undertaking to interfere with them, and upon all the authorities this is sufficient.

And as respects the description of the properties claimed by them (the amendment of which description

was clearly within the discretion of the court under the law as cited by it), it suffices to say that it is such a description as would enable a surveyor to ascertain the exact limits of the location relied upon, and is therefore good.

> "The strict rule of pleading which formerly required exact accuracy in the description of premises sought to be recovered, has in modern practice been relaxed, and a general description of the property held to be good. The provisions of State statutes as to the description of the premises by metes and bounds, have been held to be only directory, and a description by name where the property is well known is often sufficient."
>
> Glacier Min. Co. *vs.* Willis, 127 U. S., 471, 480.

VII.

The Alleged Errors in the Exclusion of Evidence.

The contention that the decree of the court below should be reversed because of the alleged exclusion of competent and material evidence may be dismissed with brief notice.

The contention is set up only in the brief of the argument in this court (Brief for Appellants, p. 10, par. 5); it is not found in the reasons assigned in the motion for a new trial (Rec., p. 212, f. 334); nor in the bill of exceptions, so called (Rec., pp. 21[illegible]–213); nor in the assignment of errors (Rec., p. 267 et seq.).

It is, therefore, not open to consideration by this court.

Respectfully submitted.

HENRY E. DAVIS,
For the Appellees.

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REAVIS *v.* FIANZA.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 16. Argued April 26, 27, 1909.—Decided November 1, 1909.

This court has jurisdiction of this case; for, even if the requisite amount is not involved, the meaning and effect of a provision of the Philippine Organic Act of July 1, 1902, c. 1369, 32 Stats. 691, is involved.

The provision of § 45 of the Organic Act of the Philippine Islands relating to title to mines by prescription refers to conditions as they were before the United States came into power and had in view the natives of the islands and intention to do them liberal justice.

Courts are justified in dealing liberally with natives of the Philippines in dealing with evidence of possession. *Cariño* v. *Insular Government*, 212 U. S. 449.

The limitation of size of mining claims in § 22 of the Philippine Organic Act applies only to claims located after the passage of that act.

Under § 28 of the Philippine Organic Act a valid location could not be made if the land was occupied by one who was already in possession before the United States came into power, and the claim of one locating under those conditions does not constitute an adverse claim under § 45 of that act.

A right to an instrument that will confer a title in a thing is a right to the thing itself, and a statutory right to apply for a patent to mining lands is a right that equity will specifically enforce.

Although, if seasonably taken, an objection to the form of remedy might be sustained, after trial on the merits it comes too late.

7 Philippine Rep. 610, affirmed.

THE facts are stated in the opinion.

Mr. Frederic R. Coudert and *Mr. Howard Thayer Kingsbury*, with whom *Mr. Paul Fuller* was on the brief, for appellant:

This court has jurisdiction both as the basis of the amount involved, and because the construction of a statute of the

United States (Act of July 1, 1902, § 45; 32 U. S. Stat. 703) is in question. The facts as well as the law are before the court for review. *De la Rama* v. *De la Rama*, 201 U. S. 309.

The judgment of the Court of First Instance was plainly and manifestly against the weight of evidence. The Philippine Supreme Court should have decided according to the preponderance of the evidence. Act of Feb. 25, 1907, No. 1596, Acts of Phil. Com.

Plaintiffs had no title to the mines at the time of the cession and have acquired none since. Both under Spanish law and ours, mines can be acquired in private ownership only by compliance with governmental regulations. Translation of Mining Law and Regulations, War Dep't, July, 1900; Royal Decree of May 14, 1867; *United States* v. *Castillero*, 2 Black, 1, 166. After the cession the Spanish Mining Laws continued in force until further legislation by Congress. *Strother* v. *Lucas*, 12 Pet. 410, 436. The act of March 2, 1901, 31 Stat. 910, forbade for the time being any government grant of mining rights, and thus suspended recourse to former law. Unless plaintiffs have acquired some rights of property under the act of July 1, 1902, they have none now, and are mere trespassers.

Section 45 of the act of July 1, 1902, 32 Stat. 703, is almost identical with § 2332, Rev. Stat. It confers no title, but merely prescribes what evidence shall entitle a claimant to a patent, upon compliance with requirements of § 37 and determination of any adverse claim under § 39. Plaintiffs at most have only a right to apply for a patent;—a *jus ad rem*, not a *jus in re*. *The Young Mechanic*, 2 Curt. 404; *S. C.*, Fed. Cas. No. 18,180; *The Carlos F. Roses*, 177 U. S. 655, 666; 2 Lindley on Mines, § 688; *In re Smith Brothers*, 7 Copp's L. O. 4; *Buffalo Zinc & Copper Co.* v. *Crump*, 69 S. W. Rep. 572; *Cleary* v. *Skiffich*, 28 Colorado, 362; *McCowan* v. *Maclay*, 16 Montana, 234.

Rights founded on possession must yield to a "location" under the statutes. *Horswell* v. *Ruiz*, 67 Colorado, 111;

Kendall v. *San Juan Mining Co.*, 144 U. S. 658. Reavis's peaceable adverse entry interrupted plaintiffs' possession and prevented them from acquiring title thereunder. *Belk* v. *Meagher*, 104 U. S. 279, 287. Plaintiffs' possession was insufficient under the Philippine statute of limitations. Phil. Code of Proc., § 41; *Hamilton* v. *South Nev. Gold & Silver Min. Co.*, 33 Fed. Rep. 562. A "location" can only be made for a territory not exceeding 1,000 feet by 1,000 feet. 32 Stat. 697, § 22.

This case is to be distinguished from *Cariño* v. *The Insular Government*, 212 U. S. 449. There the boundaries were defined; the possession was definite and exclusive, and the lands were agricultural and hence prescriptible even against the Spanish Crown. Here the plaintiffs ask the court to declare that because a particular family of Iggorrots have habitually roamed over a whole mountain-side and taken out a little loose gold, they have acquired legal title to all the mineral wealth below the surface within whatever boundaries they *now* choose to assert. Such a ruling would prevent the development of the mineral resources of the Philippine Islands. The Iggorrots' conceptions of private property hardly included subterranean rights. The appellant asks the court to appreciate a peculiar colonial problem rather than to weigh conflicting claims as to mining boundaries.

Plaintiffs were not entitled to an injunction. Their rights were doubtful and disputed. *Lawson* v. *U. S. Mining Co.*, 207 U. S. 1; *Gwillim* v. *Donellan*, 115 U. S. 45; *Tacoma Ry. & Power Co.* v. *Pacific Traction Co.*, 155 Fed. Rep. 259. They were out of possession when suit was brought. *Lacassagne* v. *Chapuis*, 144 U. S. 119; *Whithead* v. *Shattuck*, 138 U. S. 146. They should have sued at law to recover possession. *Bago* v. *Garcia*, 5 Phil. Rep. 524; *Bishop of Cebu* v. *Mangaran*, 6 Phil. Rep. 286; *Barlin* v. *Ramirez*, 7 Phil. Rep. 41; *Black* v. *Jackson*, 177 U. S. 349; *Potts* v. *Hollen*, 177 U. S. 365.

The judgment of the trial court should have been reversed for errors in the exclusion of material evidence. There is a

presumption of harm from such exclusion. *Buckstaff* v. *Russell*, 151 U. S. 626, 637; *Crawford* v. *United States*, 212 U. S. 183, 203.

Mr. Henry E. Davis for appellees:

There is no force in the contention that plaintiffs had no title to the mines in controversy at the time of the cession of the Philippine Islands and have not since acquired any. The case comes under the temporary government act, especially § 45 thereof, 32 Stat. 691, 703, which *mutatis mutandis* is, with very slight changes, identical with § 2332, Rev. Stat., taken from the act of May 10, 1872, 17 Stat. 91. The scheme of these acts was clearly to recognize in the inhabitants of territory newly acquired by the United States, rights equivalent to those of location and possession, and of themselves conferring a right to a patent for mining lands, independently of compliance with requirements of laws of the former sovereignty and local laws and customs inherited therefrom, or enacted or adopted in analogy to the institutions thereof.

Rev. Stat., § 2332, provides an additional mode of acquisition of mineral land from the Government, and, where possession has continued for the prescribed period before an adverse right exists, it is equivalent to a location under the laws of Congress. *Anthony* v. *Jillson*, 83 California, 296, 302; *Altoona &c. Co.* v. *Integral &c. Co.*, 114 California, 100, 105; *Min. Co.* v. *Bullion Min. Co.*, 3 Saw. 634, 657, 658; *Harris* v. *Equator &c. Co.*, 8 Fed. Rep. 863; *Belk* v. *Meagher*, 104 U. S. 279, 287; *Lavignino* v. *Uhlig*, 26 Utah, 125.

Upon completion of a location and until patent issues, the Government holds the title in trust for the locator; and a title so acquired will be quieted on a bill in equity even against the holder of a correct paper title. *Noyes* v. *Mantle*, 127 U. S. 348, 351; *Min. Co.* v. *Bullion Min. Co.*, *ubi supra*.

In dealing with the Philippines, the United States meant to treat its inhabitants as it had treated those of our former Mexican territory, and, indeed, to put the former on an even

more favored footing. *Cariño* v. *Insular Government*, 212 U. S. 449.

Accordingly, it is beside the question whether plaintiffs have or have not acquired any title to the mines in controversy since our acquisition of the Philippines, the facts being that it is not contended that plaintiffs ever undertook to acquire formal title to the mines during the Spanish occupation; that, almost immediately upon our occupation, they were prohibited by law from acquiring such title; that they were on their way to the acquisition of such when they encountered interference by the action of the defendant; and that the object of this case was and is to free themselves from such interference.

Plaintiffs have not mistaken their forum, they have a right to the remedy sought in this action.

Section 39 of the act of July 1, 1902, 32 Stats. 701, is *mutatis mutandis*, an exact reproduction of § 2326, Rev. Stat., as amended by act of 1881, with the difference that the question of title is provided to be determined by judgment of the court instead of by verdict of a jury. Plaintiffs, instead of going through the form of applying for a patent upon the ground of compliance with § 45 of the act of July 1, 1902, elected directly to institute proceedings in equity. The propriety of this proceeding might have been raised by demurrer or apt objection in the answer, but defendant, having answered without objection of any kind to the proceeding or the jurisdiction of the court, and having converted his answer into a petition or cross-bill for affirmative defense, closed the door upon any question as to the propriety of the proceeding itself or the jurisdiction to determine the same of the tribunal in which it was instituted. 16 Cyc. Law, 117, 129, 131, and cases cited.

Any objection to the jurisdiction or proceeding comes too late in the appellate tribunal. *Perego* v. *Dodge*, 163 U. S. 160, 164, 166, 168.

The character and extent of plaintiff's possession are unimportant, it being plain that the acts of mining on the part of

the plaintiffs were as continuous as the nature of the business and the customs of the country permitted, and such as to permit them to do acts of mining of which the methods, although crude, were yet such as were practiced and customary among their people, "and produced gold." *Stephenson* v. *Wilson*, 37 Wisconsin, 482; 2 Lind. on Mines, § 688.

The description of the premises in controversy, being by name of a property well known, is sufficient. *Glazier Mining Co.* v. *Willis*, 127 U. S. 471, 480.

And the limitation of § 22 of the act of July 1, 1902, has application only to claims located after the passage of the act.

The alleged exclusion of competent and material evidence cannot be considered, as the same is not to be found in the reasons assigned for the motion for a new trial, nor in the bill of exceptions, so-called, nor in the assignments of error.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill in equity brought by the appellees to restrain the appellant from setting up title to certain gold mines in the Province of Benguet, or interfering with the same, and to obtain an account of the gold heretofore taken from the mines. The trial court rendered a judgment or decree granting an injunction as prayed. Exceptions were taken on the grounds that the findings of fact were against the weight of evidence and that the judgment was against the law. The Supreme Court reëxamined the evidence and affirmed the decree below. Then the case was brought here by appeal.

The appellees make a preliminary argument against the jurisdiction of this court, while the appellant asks us to reëxamine the evidence and to reverse the decree on the facts as well as the law. We cannot accede to either of these contentions. We are of opinion that this court has jurisdiction. For if the affidavits of value should be held to apply to the whole of Reavis's claims and not to only that part of them that are in controversy here, still a statute of the United States,

namely, a section of the organic act (§ 45, concerning mining titles in the Philippines), is "involved," within the meaning of § 10 of the same act, which determines the jurisdiction of this court. Act of July 1, 1902, c. 1369, 32 Stats. 691. The meaning and effect of that section are in question, and our construction even has some bearing upon our opinion that the findings of the two courts below should not be reopened. For apart from the general rule prevailing in such cases, *De la Rama* v. *De la Rama*, 201 U. S. 303, 309, we shall refer to the law for special reasons why those findings should not be disturbed in a case like this.

The appellees are Iggorrots, and it is found that for fifty years, and probably for many more, Fianza and his ancestors have held possession of these mines. He now claims title under the Philippine Act of July 1, 1902, c. 1369, § 45, 32 Stat. 691. This section reads as follows:

"That where such person or association, they and their grantors have held and worked their claims for a period equal to the time prescribed by the statute of limitations of the Philippine Islands, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this Act, in the absence of any adverse claim; but nothing in this Act shall be deemed to impair any lien which may have attached in any way whatever prior to the issuance of a patent."

It is not disputed that this section applies to possession maintained for a sufficient time before and until the statute went into effect. See *Soper* v. *Lawrence Brothers Co.*, 201 U. S. 359. The period of prescription at that time was ten years. Code of Procedure in Civil Actions, August 7, 1901, No. 190, § 40; 1 Pub. Laws of Phil. Comm. 378, 384. Therefore, as the United States had not had the sovereignty of the Philippines for ten years, the section, notwithstanding its similarity to Rev. Stats., § 2332, must be taken to refer to the conditions as they were before the United States had come into power. Especially must it be supposed to have had in view the natives of

the islands, and to have intended to do liberal justice to them. By § 16 their occupancy of public lands is respected and made to confer rights. In dealing with an Iggorrot of the Province of Benguet it would be absurd to expect technical niceties, and the courts below were quite justified in their liberal mode of dealing with the evidence of possession and the possibly rather gradual settling of the precise boundaries of the appellees' claim. See *Cariño* v. *Insular Government*, 212 U. S. 449. At all events, they found that the appellees and their ancestors had held the claim and worked it to the exclusion of all others down to the bringing of this suit, and that the boundaries were as shown in a plan that was filed and seems to have been put in evidence before the trial came to an end.

It cannot be said that there was no evidence of the facts found, for the plaintiff Fianza testified, in terms, that his grandfather and father had owned the mines in question, and that he and the other appellees owned them in their turn, that they had all worked the mines, that no one else had claimed them, and that the appellant had interfered with his possession, and when he put up a sign had torn it down. No doubt his working of the mines was slight and superficial according to our notions, and the possession may not have been sharply asserted as it would have been with us, whether from Iggorrot habits or from the absence of legal title under Spanish law. But it sufficiently appears that the appellees' family had held the place in Iggorrot fashion, and to deny them possession in favor of Western intruders probably would be to say that the natives had no rights under the section that an American was bound to respect. Whatever vagueness there may have been in the boundaries, it is plain that the appellant attempted to locate a claim within them, and Fianza testified that the plan to which we have referred followed the boundaries that his father showed to him. It is said that the claim is larger than is allowed by § 22. But the limitation of that section applies only to claims "located after the passage of this act."

It is to be assumed then that the appellees and their ances-

tors had held possession and had worked their claims for much more than the period required by § 45, before the moment when the statute went into effect. It is to be assumed that the possession and working continued down to within two months of that moment. But the appellant says that he entered and staked his claims before that time and then was in possession of them. On this ground, as well as others that are disposed of by the findings below, he contends that there was an adverse claim within the meaning of the act. But the ground in question was not unoccupied and therefore he could not make a valid claim under § 28. See also act of March 2, 1901, c. 803, 31 Stats. 895, 910. He refiled a location in October, 1902, but he did not and could not make the required affidavit because of the prior occupation, and at that date Fianza was within the act, unless he already had been deprived of its benefits. Moreover, it is found that Fianza's possession continued down to the bringing of this suit. This is justified by the evidence and is not contradicted by the bill. The bill, to be sure, alleges that Reavis in 1900 illegally entered and deprived the appellees of their mines and that he still continues to maintain his unjust claim. But further on it alleges that in the spring of 1902 Reavis was directed by the Governor of Benguet not to molest the appellees; that he then waited in Manila, and after the promulgation of the law "again entered," set stakes and filed a notice of location. So that the bill does not mean that he was continuously in possession or that he was in possession when the law took effect. We are of opinion that there was no adverse claim that would have prevented the appellees from getting a patent under § 45. See *Belk* v. *Meagher*, 104 U. S. 279, 284. *Altoona Quicksilver Mining Co.* v. *Integral Quicksilver Mining Co.*, 114 California, 100, 105. See also *McCowan* v. *Maclay*, 16 Montana, 234, 239, 240.

It is suggested that the possession of Fianza was not under a claim of title, since he could have no title under Spanish law. But whatever may be the construction of Rev. Stats., § 2332, the corresponding § 45 of the Philippine Act cannot be taken

to adopt from the local law any other requirement as to the possession than the length of time for which it must be maintained. Otherwise, in view of the Spanish and American law before July 1, 1902, no rights could be acquired and the section would be empty words, whereas, as we have said before, another section of the act, § 16, still further shows the intention of Congress to respect native [illegible]vation of public lands.

Again it is urged that the section of itself confers no right other than to apply for a patent. But a right to an instrument that will confer a title in a thing is a right to have the thing. That is to say, it is a right of the kind that equity specifically enforces. It may or may not be true that if the objection had been taken at the outset the plaintiffs would have been turned over to another remedy and left to apply for a patent, but after a trial on the merits the objection comes too late. See *Perego* v. *Dodge*, 163 U. S. 160, 164; *Reynes* v. *Dumont*, 130 U. S. 354, 395.

Some objections were taken to the exclusion of evidence. But apart from the fact that they do not appear to have been saved in the exceptions taken to the Supreme Court, and irrespective of its admissibility, the evidence offered could not have affected the result. An inquiry of Fianza, whether he claimed the mines mentioned in the suit or those measured by the surveyor who made the plan to which we have referred, was met by the allowance of an amendment claiming according to the plan. A question to another of the plaintiffs, whether she saw any Iggorrots working for Reavis, would have brought out nothing not admitted by the bill, that Reavis did for a time intrude upon the mines in suit. Upon the whole case we are of opinion that no sufficient ground is shown for reversing the decree, and it is affirmed.

Decree affirmed.